

Message

From: Warren, JohnM [Warren.JohnM@epa.gov]
Sent: 9/14/2018 8:32:05 PM
To: Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Swack, David [Swack.David@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]; Dombrowski, John [Dombrowski.John@epa.gov]; McKeever, Michele [McKeever.Michele@epa.gov]; Barnet, Henry [Barnet.Henry@epa.gov]; Mazakas, Pam [Mazakas.Pam@epa.gov]; Leff, Karin [Leff.Karin@epa.gov]; Muller, Marie [MULLER.MARIE@EPA.GOV]; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; DeLeon, Rafael [Deleon.Rafael@epa.gov]; Badalamente, Mark [Badalamente.Mark@epa.gov]
CC: Strickland, Francine [Strickland.Francine@epa.gov]; James, Christina [james.christina@epa.gov]; McCray, Deborah [McCray.Deborah@epa.gov]; Toy, Nancy [Toy.Nancy@epa.gov]; Alston, Wanda [Alston.Wanda@epa.gov]; Pointer, Shereta [Pointer.Shereta@epa.gov]
Subject: RE: Draft OMB Presentation
Attachments: FY 2020 OMB Hearing Draft 9-14-18 AA DAA edits.ppt

Thanks to all for your comments. I've attached the latest version of the presentation which consolidates all comments we received including a new slide 12 **Deliberative Process / Ex. 5**

Please let us know if you have any questions.

John

From: Bodine, Susan
Sent: Friday, September 14, 2018 10:36 AM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Swack, David <Swack.David@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Dombrowski, John <Dombrowski.John@epa.gov>; McKeever, Michele <McKeever.Michele@epa.gov>; Barnet, Henry <Barnet.Henry@epa.gov>; Mazakas, Pam <Mazakas.Pam@epa.gov>; Leff, Karin <Leff.Karin@epa.gov>; Muller, Marie <MULLER.MARIE@EPA.GOV>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; DeLeon, Rafael <Deleon.Rafael@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>
Cc: Warren, JohnM <Warren.JohnM@epa.gov>; Strickland, Francine <Strickland.Francine@epa.gov>; James, Christina <james.christina@epa.gov>; McCray, Deborah <McCray.Deborah@epa.gov>; Toy, Nancy <Toy.Nancy@epa.gov>; Alston, Wanda <Alston.Wanda@epa.gov>; Pointer, Shereta <Pointer.Shereta@epa.gov>
Subject: RE: Draft OMB Presentation

I made a few edits also to slides 3, 4, 5, and 7

From: Starfield, Lawrence
Sent: Thursday, September 13, 2018 10:48 PM
To: Swack, David <Swack.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Dombrowski, John <Dombrowski.John@epa.gov>; McKeever, Michele <McKeever.Michele@epa.gov>; Barnet, Henry <Barnet.Henry@epa.gov>; Mazakas, Pam <Mazakas.Pam@epa.gov>; Leff, Karin <Leff.Karin@epa.gov>; Muller, Marie <MULLER.MARIE@EPA.GOV>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; DeLeon, Rafael <Deleon.Rafael@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>
Cc: Warren, JohnM <Warren.JohnM@epa.gov>; Strickland, Francine <Strickland.Francine@epa.gov>; James, Christina <james.christina@epa.gov>; McCray, Deborah <McCray.Deborah@epa.gov>; Toy, Nancy <Toy.Nancy@epa.gov>; Alston,

Wanda <Alston.Wanda@epa.gov>; Pointer, Shereta <Pointer.Shereta@epa.gov>

Subject: RE: Draft OMB Presentation

David,

Thanks for assembling the draft slide deck for OMB. I won't be in the office tomorrow, so I thought I'd send you a mark-up tonight (see attached).

A few points:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

Deliberative Process / Ex. 5

Larry

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

From: Swack, David

Sent: Thursday, September 13, 2018 5:51 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Dombrowski, John <Dombrowski.John@epa.gov>; McKeever, Michele <McKeever.Michele@epa.gov>; Barnet, Henry <Barnet.Henry@epa.gov>; Mazakas, Pam <Mazakas.Pam@epa.gov>; Leff, Karin <Leff.Karin@epa.gov>; Muller, Marie <MULLER.MARIE@EPA.GOV>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; DeLeon, Rafael <DeLeon.Rafael@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>

Cc: Warren, JohnM <Warren.JohnM@epa.gov>; Strickland, Francine <Strickland.Francine@epa.gov>; James, Christina <james.christina@epa.gov>; McCray, Deborah <McCray.Deborah@epa.gov>; Toy, Nancy <Toy.Nancy@epa.gov>; Alston, Wanda <Alston.Wanda@epa.gov>; Pointer, Shereta <Pointer.Shereta@epa.gov>

Subject: Draft OMB Presentation

All,

Attached is a first cut at our OMB hearing slides. A few points I would offer:

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-
-
-
-
-

Deliberative Process / Ex. 5

Thanks for your review. If we could get everyone's thoughts by COB tomorrow (Friday), we can have a new version around on Monday. Thanks in advance for your thoughts.

David

Message

From: Dombrowski, John [Dombrowski.John@epa.gov]
Sent: 12/3/2018 8:58:08 PM
To: Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]
CC: Palmer, Daniel [Palmer.Daniel@epa.gov]; Mckeever, Michele [Mckeever.Michele@epa.gov]; Knopes, Christopher [Knopes.Christopher@epa.gov]
Subject: OECA's draft sections to EPA's FY18 Annual Performance Report
Attachments: FY 2018 draft APR ALL 11 26 18 DSP.docx

Susan and Larry – OCFO is in the process of developing EPA's FY 18 Annual Performance Report, and attached are the draft OECA pieces of the APR that we have assembled with OC's comments (OCFO only provided us instructions to create these pieces/sections so we don't have an entire document for review). **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5 however, it still needs to have AA-level review. Unfortunately we need to get this over to OCFO as soon as possible so they can include our draft sections in the overall Agency draft. There will be another chance for OECA to review this document – after OCFO has made its changes to what we put forward now, and after they have assembled the many pieces of the document into one complete, draft Agency APR. We do think that

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Please let us know if you have any questions, comments, or if you would like to discuss further. Also, please let us know if you are okay with us sending these comments over to OCFO now and then review it again when we get the complete document. Thx

John Dombrowski, P.E.
Deputy Director
Office of Compliance
Office of Enforcement and Compliance Assurance, U.S. EPA
WJC South, Room 5140A (within 5142 bay area)
202-566-0742 (Office)

Ex. 6 Cell)

Message

From: Kadish, Rochele [Kadish.Rochele@epa.gov]
Sent: 4/25/2018 7:15:26 PM
To: Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]
CC: Hindin, David [Hindin.David@epa.gov]; Dombrowski, John [Dombrowski.John@epa.gov]; Cozad, David [Cozad.David@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Branning, Hannah [Branning.Hannah@epa.gov]; Bailey, Ethel [Bailey.Ethel@epa.gov]; Loving, Shanita [Loving.Shanita@epa.gov]
Subject: Materials for 11:15 NEI Energy Extraction meeting
Attachments: Energy Extraction and Production NEI AA Briefing 4 24 18.pptx

Rochele Kadish

Office of Compliance

Chief of Staff

Certified Professional Coach, EPA Coaches Cadre

202-564-3106 - Office

Ex. 6

Cell

Message

From: Theis, Joseph [Theis.Joseph@epa.gov]
Sent: 5/2/2018 7:37:24 PM
To: OECA-OCE-MANAGERS [OECAOCEMANAGERS@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]; Branning, Hannah [Branning.Hannah@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Loving, Shanita [Loving.Shanita@epa.gov]; Bailey, Ethel [Bailey.Ethel@epa.gov]; Johnson, Catherine M. [johnson.catherinem@epa.gov]; Makepeace, Caroline [Makepeace.Caroline@epa.gov]
Subject: OCE Weekly Materials Attached for Tomorrow's General
Attachments: OCE Weekly Materials 05 03 18.pdf

Joseph G. Theis
Acting Deputy Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. EPA (2243A)
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Message

From: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]
Sent: 5/17/2018 2:13:03 PM
To: Bodine, Susan [bodine.susan@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]; Theis, Joseph [Theis.Joseph@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]; OKeefe, Susan [OKeefe.Susan@epa.gov]; Binder, Jonathan [Binder.Jonathan@epa.gov]; Chapman, Apple [Chapman.Apple@epa.gov]; Brooks, Phillip [Brooks.Phillip@epa.gov]
Subject: Tribal Outreach on O&G audit program
Attachments: Tribal Consultation Policy May 2011.pdf; OECA Consultation Decision Framework for Policies and Guidance July 2013.pdf; Issue Paper on Tribal Input on Draft O&G New Owner Audit Agreement May 16 2018.docx

Susan—

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

When released on May 4, we committed to “conducting outreach and seeking feedback from states, tribes, the regulated community” among others until June 4. Also on May 4, Jim Kenney sent an email to all those invited to the February 2018 oil and gas roundtable letting them know that the Draft Agreement was available for comment; he provided a link to the document. Two tribes had been invited to the roundtable and thus were sent that email - the Ute Tribe and the Mandan, Hidatsa and Arikara (MHA) Nation (aka the Three Affiliated Tribes).

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Given that the Draft Agreement is now out for public comment, we should consider the following:

1.

Deliberative Process / Ex. 5

2.

3.

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Rosemarie

EPA POLICY
ON
CONSULTATION AND COORDINATION
WITH
INDIAN TRIBES

May 4, 2011



Table of Contents

I.	Policy Statement	1
II.	Background	2
III.	Definitions	3
IV.	Guiding Principles	3
V.	Consultation	4
	A. The Consultation Process	4
	B. What Activities May Involve Consultation.....	5
	C. When Consultation Occurs	7
	D. How Consultation Occurs.....	7
VI.	Managing the Consultation Process.....	7
	A. Roles and Responsibilities.....	7
	B. National Consultation Meeting	8
	C. Reporting.....	8
	D. EPA Senior Management Review.....	8

I. Policy Statement

EPA's policy is to consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests. Consultation is a process of meaningful communication and coordination between EPA and tribal officials prior to EPA taking actions or implementing decisions that may affect tribes. As a process, consultation includes several methods of interaction that may occur at different levels. The appropriate level of interaction is determined by past and current practices, adjustments made through this Policy, the continuing dialogue between EPA and tribal governments, and program and regional office consultation procedures and plans.

This Policy establishes national guidelines and institutional controls for consultation across EPA. EPA program and regional offices have the primary responsibility for consulting with tribes. All program and regional office consultation plans and practices must be in accord with this Policy. This Policy seeks to strike a balance between providing sufficient guidance for purposes of achieving consistency and predictability and allowing for, and encouraging, the tailoring of consultation approaches to reflect the circumstances of each consultation situation and to accommodate the preferences of tribal governments. The consultation process is further detailed in Section V of this document.

II. Background

To put into effect the policy statement above, EPA has developed this proposed *EPA Policy on Consultation and Coordination with Indian Tribes* (Policy). The Policy complies with the Presidential Memorandum (Memorandum) issued November 5, 2009, directing agencies to develop a plan to implement fully Executive Order 13175 (Executive Order). The Executive Order specifies that each Agency must have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.

This Policy reflects the principles expressed in the *1984 EPA Policy for the Administration of Environmental Programs on Indian Reservations* (1984 Policy) for interacting with tribes. The 1984 Policy remains the cornerstone for EPA's Indian program and "assure[s] that tribal concerns and interests are considered whenever EPA's actions and/or decisions may affect" tribes (1984 Policy, p. 3, principle no. 5).

One of the primary goals of this Policy is to fully implement both the Executive Order and the 1984 Indian Policy, with the ultimate goal of strengthening the consultation, coordination, and partnership between tribal governments and EPA.

The most basic result of this full implementation is that EPA takes an expansive view of the need for consultation in line with the 1984 Policy's directive to consider tribal interests whenever EPA takes an action that "may affect" tribal interests.

The Policy is intended to be implemented using existing EPA structures to the extent possible. The use of current EPA business processes, such as the Action Development Process, National and Regional Tribal Operations Committees, and tribal partnership groups is purposeful so that consultation with tribal governments becomes a standard EPA practice and not an additional requirement.

The issuance of this Policy supports and guides the development and use of program and regional office consultation plans and practices consistent with this Policy.

III. Definitions

A. “Indian tribe” or “tribe” means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1944, 25 U.S.C. 479a.

B. “Tribal official” means an elected, appointed, or designated official or employee of a tribe.

C. “Indian country” means:

1. All land within limits of any Indian reservation¹ under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

2. All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

3. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

IV. Guiding Principles

To understand both the purpose and scope of the Policy as well as the integration of the Policy, Memorandum, and Executive Order, it is helpful to list principles found in EPA’s January 2010 *Plan to Develop a Tribal Consultation and Coordination Policy Implementing Executive Order 13175*:

EPA’s fundamental objective in carrying out its responsibilities in Indian country is to protect human health and the environment.

EPA recognizes and works directly with federally recognized tribes as sovereign entities with primary authority and responsibility for each tribe’s land and membership, and not as political subdivisions of states or other governmental units.

EPA recognizes the federal government’s trust responsibility, which derives from the historical relationship between the federal government and Indian tribes as expressed in certain treaties and federal Indian law.

¹ EPA’s definition of “reservation” encompasses both formal reservations and “informal” reservations, i.e., trust lands set aside for Indian tribes. *See for example* Oklahoma Tax Comm’n v. Sac and Fox Nation, 508 U.S. 114, 123 (1993); 56 Fed. Reg. 64876, 64881 (1991); or 63 Fed. Reg. 7254, 7258 (1998).

EPA ensures the close involvement of tribal governments and gives special consideration to their interests whenever EPA's actions may affect Indian country or other tribal interests.

When EPA issues involve other federal agencies, EPA carries out its consultation responsibilities jointly with those other agencies, where appropriate.

In addition, it is helpful to note the distinction between this Policy, federal environmental laws pertaining to public involvement, and Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. Under this Policy, EPA consults with federally recognized tribal governments when Agency actions and decisions may affect tribal interests. EPA also recognizes its obligations to involve the public as required by federal environmental laws. Finally, EPA recognizes the need to be responsive to the environmental justice concerns of non-federally recognized tribes, individual tribal members, tribal community-based/grassroots organizations and other indigenous stakeholders.

V. Consultation

A. The Consultation Process. To the fullest extent possible, EPA plans to use existing EPA business operations to put this Policy into effect.

Tribal officials may request consultation in addition to EPA's ability to determine what requires consultation. EPA attempts to honor the tribal government's request with consideration of the nature of the activity, past consultation efforts, available resources, timing considerations, and all other relevant factors.

Consultation at EPA consists of four phases: Identification, Notification, Input, and Follow-up:

1. **Identification Phase:** EPA identifies activities that *may be* appropriate for consultation, using the mechanisms described in section B.2, below. The identification phase should include a determination of the complexity of the activity, its potential implications for tribes, and any time and/or resource constraints relevant to the consultation process. This phase should also include an initial identification of the potentially affected tribe(s).

2. **Notification Phase:** EPA notifies the tribes of activities that may be appropriate for consultation.

Notification can occur in a number of ways depending on the nature of the activity and the number of tribes potentially affected. For example, EPA may send out a mass mailing to all tribes, may contact the tribal governments by telephone, or provide notice through other agreed upon means. EPA normally honors tribal preferences regarding the specific mode of contact.

Notification includes sufficient information for tribal officials to make an informed decision about the desire to continue with consultation and sufficient information to understand how to provide informed input.

Notification should occur sufficiently early in the process to allow for meaningful input by the tribe(s).

3. **Input Phase:** Tribes provide input to EPA on the consultation matter. This phase may include a range of interactions including written and oral communications including exchanges of information, phone calls, meetings, and other appropriate interactions depending upon the specific circumstances involved. EPA coordinates with tribal officials during this phase to be responsive to their needs for information and to provide opportunities to provide, receive, and discuss input. During this phase, EPA considers the input regarding the activity in question. EPA may need to undertake subsequent rounds of consultation if there are significant changes in the originally-proposed activity or as new issues arise.

4. **Follow-up Phase:** EPA provides feedback to the tribes(s) involved in the consultation to explain how their input was considered in the final action. This feedback should be a formal, written communication from a senior EPA official involved to the most senior tribal official involved in the consultation.

B. *What Activities May Involve Consultation?*

1. **General Categories of Activities Appropriate for Consultation:** The broad scope of consultation contemplated by this Policy creates a large number of actions that *may* be appropriate for consultation.

The following list of EPA activity categories provides a general framework from which to begin the determination of whether any particular action or decision is appropriate for consultation. The final decision on consultation is normally made after examining the complexity of the activity, its implications for tribes, time and/or resource constraints, an initial identification of the potentially affected tribe(s), application of the mechanisms for identifying matters for consultation, described below, and interaction with tribal partnership groups and tribal governments.

The following, non-exclusive list of EPA activity categories are normally appropriate for consultation if they may affect a tribe(s):

- Regulations or rules
- Policies, guidance documents, directives
- Budget and priority planning development
- Legislative comments²
- Permits

² Legislative comments are a special case where, due to short legislative timeframes, consultation in advance of comment submission may not always be possible. Nevertheless, EPA will strive to inform tribes when it submits legislative comments on activities that may affect Indian country or other tribal governmental interests.

- Civil enforcement and compliance monitoring actions³
- Response actions and emergency preparedness⁴
- State or tribal authorizations or delegations
- EPA activities in implementation of U.S. obligations under an international treaty or agreement.

2. **EPA's Mechanisms for Identifying Matters for Consultation:** The mechanisms EPA uses for identifying matters appropriate for consultation are as follows:

- a. **Tribal Government-Requested Consultation.** Tribal officials may request consultation in addition to EPA's ability to determine what requires consultation. EPA attempts to honor the tribal government's request with consideration of the nature of the activity, past consultation efforts, available resources, timing considerations, and all other relevant factors.
- b. **Action Development Process (ADP).** Early in the process, the lead program office assesses whether consultation is appropriate for the subject action. Its determination is available to tribes in the semiannual Regulatory Agenda as well as in the subset of rules on the Regulatory Gateway accessed through the EPA website.

This Policy is not intended to subject additional Agency actions to the ADP process for the sole purpose of a consultation analysis. Non-ADP actions are subject to consultation analysis through other mechanisms identified within the Policy.

- c. **National Program Offices and Regional Offices.** For those actions and decisions not in the ADP process, program and regional offices also determine if consultation is appropriate under this Policy. EPA's Tribal Consultation Advisors, described below, provide assistance with that determination. Such determination includes coordination with national and/or regional tribal partnership groups.

- d. **National and Regional Tribal Partnership Groups.** EPA meets regularly with a number of national and regional tribal partnership groups. These groups assist in the identification of matters that may be appropriate for consultation.

³ Primary guidance on civil enforcement matters involving tribes can be found in "Guidance on the Enforcement Priorities Outlined in the 1984 Indian Policy," and "Questions and Answers on the Tribal Enforcement Process." This guidance is intended to work with the Tribal Consultation Policy in a complementary fashion to ensure appropriate consultation with tribes on civil enforcement matters.

⁴ The term "response" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) includes removals and remedial actions.

C. *When Consultation Occurs.* Consultation should occur early enough to allow tribes the opportunity to provide meaningful input that can be considered prior to EPA deciding whether, how, or when to act on the matter under consideration. As proposals and options are developed, consultation and coordination should be continued, to ensure that the overall range of options and decisions is shared and deliberated by all concerned parties, including additions or amendments that occur later in the process.

D. *How Consultation Occurs.* There is no single formula for what constitutes appropriate consultation, and the analysis, planning, and implementation of consultation should consider all aspects of the action under consideration. In the case of national rulemaking, a series of meetings in geographically diverse areas may be appropriate. For more routine operational matters, a less formal process may be sufficient.

VI. Managing the Consultation Process

A. Roles and Responsibilities

The following roles and responsibilities have been defined to allow EPA to effectively implement this Policy. These roles and responsibilities reflect the fact that, while oversight and coordination of consultation occurs at EPA headquarters, as a practical matter, much of the actual consultation activity occurs in EPA's program and regional offices. The responsibility for initially analyzing the need for consultation and then subsequently carrying it out, resides with these offices.

1. **Designated Consultation Official:** In addition to being the EPA's National Program Manager for the EPA Tribal Program, EPA's Assistant Administrator for the Office of International and Tribal Affairs (OITA) is the EPA-Designated Consultation Official under the Executive Order. These responsibilities include coordination and implementation of tribal consultation in accordance with this Policy and Agency compliance with the 1984 Indian Policy.

The Designated Consultation Official has the authority for: (1) defining EPA actions appropriate for consultation, (2) evaluating the adequacy of that consultation, and (3) ensuring that EPA program and regional office consultation practices are consistent with this Policy.

Per the Memorandum, the Designated Consultation Official reports annually to OMB on the implementation of the Executive Order.⁵ Further, the Designated Consultation Official certifies compliance with the Executive Order for applicable EPA activities. The American Indian Environmental Office (AIEO) is located within OITA and coordinates the operational details of the Policy and compiles consultation-related information for the Designated Consultation Official.

2. **Assistant Administrators:** Assistant Administrators oversee the consultation process in their respective offices including analysis for potential

⁵ Report is filed annually by August 3rd.

consultation and the consultation process. Each program office is directed to prepare a semi-annual agenda of matters appropriate for consultation and a brief summary of consultation that has occurred. The program offices provide this information to AIEO for reporting to OMB. Each office is directed to designate a Tribal Consultation Advisor.

3. **Regional Administrators:** Regional Administrators oversee the consultation process in their respective offices including analysis for potential consultation and the consultation process. Each region is directed to prepare a semi-annual agenda of matters appropriate for consultation and a brief summary of consultation that has occurred. The regions provide this information to AIEO for reporting to OMB. Each region is directed to designate a Tribal Consultation Advisor.

4. **Tribal Consultation Advisors:** Tribal Consultation Advisors (TCAs) assist in identifying matters appropriate for consultation and prepare summary information on consultation activities and provide it to AIEO. TCAs receive and provide advice within their respective program offices and regions on what actions may be appropriate for consultation. TCAs also serve as a point-of-contact for EPA staff, tribal governments, and other parties interested in the consultation process. TCAs are the in-office subject matter experts to assist staff and management in the implementation of the Policy.

B. National Consultation Meeting

OITA/AIEO may convene a periodic National Consultation Meeting to be chaired by the Designated Consultation Official to review the consultation process across the Agency.

C. Reporting

Pursuant to the Memorandum, EPA submits annual progress reports to OMB on the status of the consultation process and actions and provides any updates to this Policy.

D. EPA Senior Management Review

The Designated Consultation Official communicates regularly with the Assistant and Regional Administrators to review the consultation system, to consider any matters requiring senior management attention, and to make adjustments necessary to improve the Policy or its implementation.

EPA plans to receive ongoing feedback on the Policy from all parties to assess its effectiveness and implement improvements.



Message

From: Chapman, Apple [Chapman.Apple@epa.gov]
Sent: 2/15/2018 2:10:28 PM
To: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]; Theis, Joseph [Theis.Joseph@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]; Milton, Philip [Milton.Philip@epa.gov]; Loving, Shanita [Loving.Shanita@epa.gov]
Subject: RE: materials for self-disclosure briefing
Attachments: Sample_ New Owners Questionnaire.docx

Susan,

The attached document should be included as an appendix to the Power Point. Thank you.

Ms. Apple Chapman | Deputy Director, Air Enforcement Division | U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW, Washington DC, 20004 | 202-564-5666 (office) | Personal Matters / Ex. 6 (mobile) |

From: Kelley, Rosemarie
Sent: Thursday, February 15, 2018 9:06 AM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Milton, Philip <Milton.Philip@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>; Loving, Shanita <Loving.Shanita@epa.gov>
Subject: materials for self-disclosure briefing

Susan –

Here is a proposed agenda for our meeting with you tomorrow at 11:15 am on EPA's Self Disclosure Program:

Deliberative Process / Ex. 5

We look forward to talking with you about where you would like to take this program.

Rosemarie

Message

From: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]
Sent: 2/15/2018 2:06:16 PM
To: Bodine, Susan [bodine.susan@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]; Theis, Joseph [Theis.Joseph@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]; Milton, Philip [Milton.Philip@epa.gov]; Chapman, Apple [Chapman.Apple@epa.gov]; Loving, Shanita [Loving.Shanita@epa.gov]
Subject: materials for self-disclosure briefing
Attachments: Briefing on Possible Revisions to Approach for Handling Self Disclosed Violations 01-19-2018.docx; AA Briefing Self-Disclosure_9.29.17 with updated stats_2.13.18.docx; OG New Owners - Rev Draft_02.15.2018.pptx

Susan –

Here is a proposed agenda for our meeting with you tomorrow at 11:15 am on EPA's Self Disclosure Program:

Deliberative Process / Ex. 5

We look forward to talking with you about where you would like to take this program.

Rosemarie

Message

From: Ringel, Aaron [ringel.aaron@epa.gov]
Sent: 4/23/2018 6:55:03 PM
To: Jackson, Ryan [jackson.ryan@epa.gov]
CC: Palich, Christian [palich.christian@epa.gov]; Frye, Tony (Robert) [frye.robert@epa.gov]; Rodrick, Christian [rodrick.christian@epa.gov]; Lyons, Troy [lyons.troy@epa.gov]; Shimmin, Kaitlyn [shimmin.kaitlyn@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]
Subject: RE: Updated Program Cheat Sheet Doc
Attachments: 04-23-2018 - House Budget Hearing Program Cheat Sheets V10.docx

Ryan, looping in Susan and Patrick to see if they have any info that would help answer your question.

-Aaron

From: Jackson, Ryan
Sent: Monday, April 23, 2018 2:53 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Cc: Palich, Christian <palich.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Rodrick, Christian <rodrick.christian@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Shimmin, Kaitlyn <shimmin.kaitlyn@epa.gov>
Subject: RE: Updated Program Cheat Sheet Doc

Deliberative Process / Ex. 5

From: Ringel, Aaron
Sent: Monday, April 23, 2018 2:49 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Palich, Christian <palich.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Rodrick, Christian <rodrick.christian@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Shimmin, Kaitlyn <shimmin.kaitlyn@epa.gov>
Subject: Updated Program Cheat Sheet Doc

Here's an updated version with the **Deliberative Process / Ex. 5**
[redacted] We will have the updated table of contents along with this documents printed for both your binder and the admins so we swap them out.

Aaron E. Ringel
Deputy Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency

W: 202.564.4373
Ringel.Aaron@epa.gov

Message

From: Traylor, Patrick [traylor.patrick@epa.gov]
Sent: 3/15/2018 10:03:25 PM
To: Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]
Subject: FW: Oil and Natural Gas Roundtable
Attachments: Oil and Natrual Gas Roundtable Highlights.docx

FYSA. This note went out to all the roundtable participants just now.

Patrick Traylor

Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)

Ex. 6

 (cell)

From: Traylor, Patrick
Sent: Thursday, March 15, 2018 6:03 PM
To: Traylor, Patrick <traylor.patrick@epa.gov>
Cc: James ("Jim") C. Kenney (Kenney.James@epa.gov) <Kenney.James@epa.gov>; Wagner, Kenneth <wagner.kenneth@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>
Subject: Oil and Natural Gas Roundtable

Dear Oil and Natural Gas Roundtable Participant:

On behalf of the U.S. Environmental Protection Agency (EPA), the Environmental Council of State (ECOS) and the Interstate Oil and Gas Compact Commission (IOGCC), I would like to thank you for sharing your individual perspectives at the recent roundtable in Denver, Colorado.

As you may recall, the first objective of the roundtable was to improve relationships and enhance communications among stakeholders. The discussions were professional and constructive throughout the entirety of the roundtable thus meeting this objective. The second objective of the roundtable was to identify and share solutions related to challenges that adversely impact efficient and timely compliance. Again, roundtable participants candidly shared their individual perspectives related to challenges and solutions.

Our roundtable cosponsors, ECOS and IOGCC are offering similar opportunities for engagement at their respective spring meetings. The ECOS Shale Gas Caucus will host a discussion stemming from the roundtable on Tuesday, March 20 at their meeting in St. Paul, Minnesota. The IOGCC will also host a discussion at their May 6th through 8th Business Meeting in Oklahoma City, Oklahoma. The EPA will participate in both the ECOS and IOGCC meetings.

Attached please find a draft document titled *Oil and Natural Gas Roundtable Highlights* which captures the key aspects of the roundtable discussions. The ideas captured in the attached draft document may be of interest to stakeholders for further discussion. If you wish to suggest edits on the attached draft document, please do so by Friday, March 30, 2018. Suggested edits should be submitted in MS Word track changes to Jim Kenney. We ask that you submit edits on behalf of yourself or respective individual organization. We will consider suggested edits and repost an updated version of the attached document to our website on or about April 9, 2019. All the roundtable materials, including the attached document, can be found on our website at www.epa.gov/uog.

I would like to thank Ken Wagner, Senior Advisor to the Administrator For Regional and State Affairs, for his leadership in making the roundtable a reality and Doug Benevento, Regional Administrator, for graciously hosting this event in Denver, Colorado. Thank you for your commitment to these discussions, the environment and responsible energy production. We look forward to further opportunities to engage with all stakeholders on these topics.

If you have any questions, please contact Jim Kenney, Senior Policy Advisor for Unconventional Oil and Natural Gas, at

Ex. 6 or kenney.james@epa.gov.

Warm regards,
Patrick

Patrick Traylor

Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)

Ex. 6 (cell)

Oil and Natural Gas Roundtable Highlights

Background

On February 28, 2018, the U.S. Environmental Protection Agency (EPA) concluded a two-day oil and natural gas roundtable cosponsored by the Environmental Council of States (ECOS) and the Interstate Oil and Gas Compact Commission (IOGCC). Oil and natural gas stakeholders from states, tribes, industry, trade groups, and environmental non-governmental organizations (eNGOs) participated in the discussions.

The roundtable was organized to enhance coordination and communication, and ensure safe and responsible domestic energy production. Specifically, the roundtable objectives were:

1. To improve relationships and enhance communications among oil and natural gas stakeholders.
2. To identify and share solutions related to challenges that adversely impact efficient and timely compliance.

To that end, oil and natural gas stakeholders came together to share their individual expertise and experiences. The roundtable focused on identifying practical solutions to various environmental regulatory, permitting, and compliance challenges to achieve more effective and efficient environmental outcomes.

Participants were asked to share their individual viewpoints throughout the roundtable and consensus was not sought. The highlights, presented below, do not represent consensus and are not intended to be a complete recitation of the proceedings. Rather, this document compiles individual input from the roundtable participants and is intended to serve as a reference to oil and natural gas stakeholders for further discussions. Also, this document does not represent an Agency position on the topics discussed herein and should not be construed as such¹.

Highlights

During the roundtable, EPA shared the following information with participants related to ongoing Agency efforts:

1. Office of Air and Radiation (OAR) – A number of regulatory efforts are underway related to oil and natural gas regulation. The efforts include:
 - a. Reconsideration of New Source Performance Standards OOOOa – OAR is looking at technical reconsideration concerns and methane policy components.
 - b. New Source Review (NSR) reform – OAR is looking at options to streamline the permitting process.

¹ This document is not a regulation, policy, guidance, or the outcome of a scientific inquiry. Thus, this document does not impose legally binding requirements on the EPA, states, tribes, or the regulated community. This document does not confer legal rights or impose legal obligations upon any member of the public.

- c. Air Toxics Program – OAR withdrew of the “once-in, always-in” policy from 1995.
 - d. Control Technique Guidelines (CTG) – Withdrawal of the oil and natural gas CTG is at Office of Management Budget for clearance to be published in the Federal Register.²
 - e. Implementation of the National Ambient Air Quality Standards (NAAQS) – OAR is planning to issue designations in April. OAR is looking at issues like state flexibilities and transport from international contributions.
2. Office of Enforcement and Compliance Assurance (OECA) – EPA is working to foster compliance and correct non-compliance. OECA’s Air Enforcement Division (AED) is working on an oil and natural gas sector initiative to streamline auditing and self-disclosures for new owners. AED is developing a template for more routine and regular disclosure of violations with an initial focus on storage tank emission control systems. AED welcomes engagement with states, industry and eNGOs and anticipates launching this effort in the next two to three months.
 3. Office of Policy – EPA’s Smart Sectors Program is meeting with oil and natural gas stakeholders to offer meaningful engagement above EPA’s media stovepipes. The Smart Sectors Program focuses on a holistic approach, looking at the regulatory landscape impacting the sector of focus. The Smart Sectors Program participates on field tours and shares its observations with respective EPA program offices to improve regulatory and permitting programs.
 4. Office of Water (OW) – With respect to management of produced water, EPA recognizes the need to find alternative approaches to disposal in Underground Injection Control (UIC) Class II wells. Within the next two months, OW plans to announce a study in the Federal Register where the Agency intends to seek input on new approaches and technologies to manage produced water.

General Themes

In retrospect, individual stakeholder comments shared during the roundtable were grouped into the following categories following the roundtable, representing the following general themes.

1. Certainty and Consistency:
 - a. Regulations, permits, and compliance assurance activities should have certain and clear goals, create incentives for achieving better outcomes, and focus on the intended outcomes.
 - b. Regulators should strive for consistency with respect to regulatory/policy/permit interpretations while providing timely information to the organization requesting the interpretation (i.e., state agency, industry, etc.).

² On March 1, 2018, EPA signed a notice seeking public comment on withdrawing the 2016 CTG for the oil and natural gas industry.

- c. States should have a clear pathway to determine equivalency of individual state rules and regulations with federal statutes/regulations. For example, State leak detection and repair regulations as equivalency to federal standards.
 - d. Regulators should share best practices related to regulation development and permitting programs.
2. Collaboration/Engagement:
- a. Regardless of delegation/primacy, the important part of “cooperative federalism” is cooperation. Federal and state regulators should work to establish meaningful relationships to ensure timely and effective outcomes.
 - b. Stakeholders should strive for improved public outreach and public transparency.
 - c. Industry and eNGOs should engage in meaningful collaboration.
 - d. How do we achieve meaningful collaboration and community engagement?
 - e. While meaningful collaborative processes may be shared and replicated, the outcome of stakeholder collaborations should not be assumed to scale nationally. For example, replicating the collaborative process which yielded Colorado’s Regulation 7 could serve as model for other states. However, assuming Colorado’s Regulation 7 could apply nationally without a similar stakeholder process may not be appropriate.
3. Technology and Data:
- a. Given dynamic advances in technology, regulations and permits should provide flexibility for the use of science-based technologies.
 - b. Identify pathways to adopt innovative technologies.
 - c. Industry should identify ways to increase transparency and fill data gaps by sharing data and conducting and publishing peer-reviewed studies. Sound data is key to pragmatic, effective policy.
4. Measures of Success:
- a. Compliance with environmental regulations and permits is a shared stakeholder goal.
 - b. Regulators should prioritize measuring compliance outcomes as opposed to activity-based metrics like number of inspections, number of enforcement actions, etc.
 - c. Federal oversight of delegated and primacy programs should credit states for exceeding federal requirements, not just identify deficiencies.

5. Resources:

- a. Increasing efficiency in light of decreasing federal and state budgets presents timeliness concerns for industry and oversight concerns for eNGOs.
- b. Regulators should prioritize limited travel resources to ensure regulation and permit writers get into the field to see and understand industry operations.

Focused Discussions

Three breakout sessions were held during the roundtable.³ The breakout sessions were titled: regulation and policy, permitting, and compliance assurance. The following discussions represent general individual stakeholder sentiments expressed during each breakout session.

Regulation and Policy

Within the regulation and policy breakout session discussions focused on potential solutions for innovations related to the beneficial reuse of produced water and reducing air emissions. Further discussions focused on creating regulatory certainty and consistency.

1. Innovation related to produced water:

- a. For innovation around produced water treatment and use outside of the oil and natural gas industry, treated produced water must be valued and treated as a commodity by all stakeholders – not just an expense/waste for industry.
- b. Stakeholders need to collaborate on produced water innovation prior to the next significant drought. Such collaboration should include states, industry, eNGOs, researchers, communities, etc.
- c. When treated produced water is used outside of the oil and natural gas applications, the term *renewable water* should be used to describe the product/application since the water is added to hydrologic cycle. Water added to the hydrologic cycle is a renewable resource (like solar or wind). California and New Mexico are leading various efforts related to renewable water.
- d. There are limited examples of treated produced water used as valued water source:
 - i. California has used produced water for agricultural irrigation for approximately 40 years. The Central Valley Water Board has convened an expert panel of stakeholders, including regulators, eNGOs, oil and gas operators, the Ag industry, toxicologists and scientists, etc. are in the process of conducting a scientific study and plan to produce a white paper on the use of produced water on crop irrigation.

³ The complete list of breakout session topics, as suggested by individuals during the roundtable, are listed in Appendix A.

- ii. New Mexico is working with a Pennsylvania-based company that has a proven technology and interested in investing millions of dollars into such a treatment plant. The constituents in the produced water are marketable, commodity products that will serve as feedstock for other industry.
 - e. Due to water scarcity, some states are already considering using formation water for source water. Providing incentives to the oil and natural gas industry to treat produced water vs. dispose of it will facilitate technological advances thus helping states.
 - f. Innovation may be driven by regulatory certainty but that does not necessarily mean innovation is only driven by regulations.
 - g. Intended uses of treated produced water should drive federal and state regulatory treatment standards. Prohibitive to test for the ~400-600 compounds found in produced water and test methods don't exist for all these compounds in high TDS water.
 - h. Federal and state regulations for treated produced water should include flexibility for regional variations in produced water.
 - i. Peer-reviewed, scientific data on produced water treatment and uses is necessary to overcome public perceptions regarding its use outside of the oil and natural gas sector (e.g., agricultural irrigation).
 - j. Stakeholders need to explain that beneficial use of treated produced water benefits the public and the environment to dispel the perception that it merely benefits industry.
2. Innovation related to air emissions:
- a. Technology-based regulations will need to be updated as technology continues to advance.
 - b. Performance targets can help drive technology provided we can verify/measure meeting such targets.
 - c. Performance targets or standards can help avoid blocking certain technologies in favor of another technology.
 - d. The ECOS Shale Gas Caucus has been focusing on alternative practices that drive innovation and demonstrate compliance if technology cannot be used.
3. Certainty and Consistency:
- a. Performance-based regulations are generally easier to implement as they are less prescriptive and not open to multiple interpretations. Since less prescriptive on how to achieve environmental outcome, can incentivize the use of innovative technology.

- b. While state regulators want some degree of autonomy to account for regional differences in their industry, geology, etc., a strong federal program is necessary for states to meet or exceed.
- c. Regulators at the federal and state levels struggle with the regulatory floor to ensure adequate protections.
- d. Industry needs to provide data to fill gaps to help regulators set the floor for specific rules.
- e. The ECOS Shale Gas Caucus and the Groundwater Protection Council are working on closing data gaps on produced water management.

Permitting

Within the permitting breakout session discussions focused on potential solutions for meaningful permitting (outcome-based, understandable) and overall efficiency (time, resources).

1. Meaningful:

- a. In primacy or delegated permit programs, states have discretion to implement those programs with respect to their primacy/delegation agreement. EPA should provide consistent and timely guidance to states when interpretive questions arise that are outside of the primacy/delegation agreement.
- b. In instances where a State has raised an interpretive permitting program question to EPA and a timely response has not been provided, state senior leadership should elevate to EPA's senior leadership.
- c. EPA's oversight of state permitting programs should credit/compliment states for clearly exceeding minimum expectations as opposed to merely focus on areas of concern as this would help tell a more holistic story.
- d. Collaboration around permitting programs and the permitting process will build trust and efficiencies.
- e. Creating more meaningful regulations will result in the issuance of more meaningful permits.
- f. Work smarter, not harder by making sure the permittee understands the permitting process and the permittee submits a permit application upon which the permitting authority can act.

2. Efficiency:

- a. Improving permitting efficiency timeframes can avoid adverse economic impacts to industry and states.
- b. Federal permitting on tribal lands should be commensurate with the neighboring state permitting timeframes to ensure the federal government does not create an economic disincentive for the tribe.
- c. EPA should focus on a group of states that exceed expectations in administering their primacy or delegated permitting programs and consider following their practices to gain efficiencies at the federal level.
- d. In an era of decreasing budgets, Lean efforts are underway to improve permitting timeframes and share permitting staff expertise across the organization to meet state and industry needs.

Compliance Assurance

Within the compliance assurance breakout session discussions focused on potential solutions for simplifying compliance obligations, compliance based outcomes, and compliance through collaboration and incentives.

1. Simplifying compliance obligations:

- a. Simplifying regulations can result in more meaningful permit obligations for industry. Re-writing complex regulatory requirements into permits yields complex permits.
- b. Regulators should consider easily-understandable regulations, relying on self-certification, and find-and-fix approaches will allow for innovation and economical compliance.
- c. When lowering a regulatory threshold, federal and state regulators should rely on science.
- d. Voluntary environmental programs like Natural Gas Star should not automatically serve as the basis for regulatory programs.
- e. Finding opportunities for increased coordination, training, and consistent interpretation will assist with compliance outcomes.
- f. Creating regular opportunities for industry to discuss issues in a non-enforcement context would help with compliance outcomes.
- g. Creating regulatory clarity through enforcement is not an equitable solution for an unclear or poorly written regulation.
- h. Regulators should articulate what it means to comply when promulgating a new regulation, offer FAQ related to compliance, and provide enforcement discretion for

new rules.

- i. Regulators should conduct meetings with industry to share information and explain what is expected and upcoming regulatory changes.
 - j. Creating a stakeholder advisory council to educate EPA technical staff about the industry they are regulating would be beneficial.
 - k. Writing clear, simple rules is extremely hard for regulators and rules benefit from iteration through stakeholder engagement.
 - l. Industry is innovative and constantly going through tremendous changes, often more quickly than a rulemaking allows.
 - m. Some regulators have statutory obligations to review/reconsider rules on a periodic basis (e.g., every five years). In some instances, failure to go through such a process may invalidate a rule.
 - n. Meet regularly with industry, trade associations and NGOs so when they have a rule it's not a surprise. Sometimes rules have to change, etc.
 - o. Guidance documents help to memorialize how rules should be interpreted and are most helpful if they accompany a new rule.
2. Compliance-based outcomes:
- a. Focusing on outcomes, not outputs. For example, approximately 35 states are working through ECOS to measure outcomes under 14 different metrics.
 - b. Compliance data should influence the rulemaking process, but there is a lack of transparency to date.
 - c. Federal oversight of state compliance programs drains significant resources from the primary mission.
 - d. Big data companies, like Google or Apple, may be able to assist with outcome based data/measurements.
 - e. Proposed funding cuts to EPA detract from the public's perception of industry. Industry should step up and demand EPA receives the funding it needs.
3. Compliance through collaboration/incentives:
- a. Enforcement should be the last tool relied upon.

- b. Stakeholders should get together outside of compliance issues to promote collaboration and, trust and discuss issues without escalation.
- c. Regulators should incentivize behavior like frequency of inspections (i.e., the better the result, the lower the inspection priority), and in incentivize behavior in self-audit policies.
- d. Regarding the self-disclosure of potential violations, the biggest obstacle for industry is not understanding the potential risks of doing so.
- e. The new owner audit and self-disclosure program that is being developed for the oil and gas sector should go beyond “new owners” and focus on existing operations.
- f. Industry experience with EPA’s audit policy varies. Experiences with EPA Headquarters are generally positive, but experiences with EPA Regional Offices are generally negative.
- g. Lack of compliance data can hinder regulators in determining if compliance is improving and if regulatory benefits intended by the rule were achieved.

Appendix A: Complete List of Topics for the Breakout Sessions

Breakout Session 1: Regulation and Policy

- Need for produced water management innovation
- Certainty/Regionalism
- Community engagement
- Clearly written rule/ consistent interpretation
- Planned collaboration
- Goal focused
- Allow for innovative technologies
- State equivalencies
- Incentives
- Good data for decision making
- Collaboration
- Best Practices for rule development
- Production segment - unique differences
- Canadian/Alberta regulation development model

Breakout Session 2: Permitting

- Community Engagement
- Consistency w/ regional responses
- Planned collaboration
- Tribal outcomes with process
- Streamlining process
- Efficiency/speed/LEAN
- Resources
- NEPA - Less review outside of authority.

Breakout Session 3: Compliance Assurance

- Consistency among regional responses
- Coordination with states on oil and gas new owner audit template
- Planned collaboration
- Innovative technology without rule re-writing
- Regular regulations
- Incentives
- Compliance can help industry be competitive (bad actors)
- Reduced directed action (e.g., recordkeeping) to allow problem solving
- Metrics of success (CMS)
- Not just numbers of enforcement actions, environmental based results
- Environmental results program
- Transparency of data used to measure compliance

Message

From: Traylor, Patrick [traylor.patrick@epa.gov]
Sent: 5/21/2018 3:09:30 PM
To: Bodine, Susan [bodine.susan@epa.gov]
Subject: OECA DAA Project Management Report (May 21, 2018)
Attachments: OECA DAA Project Management Report (May 21, 2018).docx

Please find attached a brief summary of the various projects that I have on my desk.

Patrick Traylor

Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)

Ex. 6 (cell)

Message

From: Hull, George [Hull.George@epa.gov]
Sent: 9/10/2018 7:33:05 PM
To: Bodine, Susan [bodine.susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]
CC: egan, patrick [egan.patrick@epa.gov]
Subject: Draft Administrator Talking Points
Attachments: Tlkg Pts for Administrator at CEEC 9-10-18.docx

Susan, Larry and Patrick,

I've added content (in red) to the draft talking points for the Administrator's meeting with CEEC.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Let me know if there is more I can do to help on this. - George

Deliberative Process / Ex. 5

Message

From: Beach, Christopher [beach.christopher@epa.gov]
Sent: 9/12/2018 6:56:06 PM
To: Bodine, Susan [bodine.susan@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]
Subject: RE: AA Wheeler Enforcement Speech Request
Attachments: CEEC remarks 9-13-18.docx

Susan, here's the latest draft of the remarks. **Deliberative Process / Ex. 5**, but would you have a chance to take a quick look at this today and just make sure there are no glaring errors or problems in here?

Thank you!
Chris

From: Bodine, Susan
Sent: Monday, September 10, 2018 5:52 PM
To: Beach, Christopher <beach.christopher@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: AA Wheeler Enforcement Speech Request

These are long – but provide enough material for you to draw from.

From: Beach, Christopher
Sent: Monday, September 10, 2018 5:31 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: AA Wheeler Enforcement Speech Request

Hi Susan and Patrick, sorry to bother, but circling back to see if you think these will be ready at some point today?

Thanks!
Chris

From: Beach, Christopher
Sent: Friday, September 7, 2018 11:06 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: AA Wheeler Enforcement Speech Request

That would be perfect. Thank you!

From: Bodine, Susan
Sent: Friday, September 7, 2018 10:18 AM
To: Beach, Christopher <beach.christopher@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: AA Wheeler Enforcement Speech Request

We can get you something by COB Monday.

From: Beach, Christopher
Sent: Friday, September 7, 2018 9:48 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: AA Wheeler Enforcement Speech Request

Susan and Patrick,

Happy Friday. AA Wheeler will be speaking to the Corporate Environmental Enforcement Council next week on Thursday. Their folks sent me four big picture topics that they would like to hear Wheeler's perspective on: cooperative federalism, limits on enforcement (fair and statutorily-focused enforcement), meaningful metrics, and compliance assistance. They mentioned that compliance assistance and metrics are the two hot topics for them right now. Would you be able to help provide some talkers on these issues? This is really

Deliberative Process / Ex. 5

Thanks!

Chris Beach
Speechwriter
U.S. EPA

Ex. 6

Deliberative Process / Ex. 5

Message

From: Branning, Hannah [Branning.Hannah@epa.gov]
Sent: 6/26/2018 7:10:35 PM
To: Bodine, Susan [bodine.susan@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]
CC: Loving, Shanita [Loving.Shanita@epa.gov]; Bailey, Ethel [Bailey.Ethel@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]
Subject: June ED/RC Call Materials
Attachments: June 2018 ED RC Call Materials SLP.pdf

Susan,

We are going to try something different this month and see how it works. Attached are the materials with notes under your updates and the questions we sent to the regions for the roundtable. I also added a reminder to alert the ED/RCs to look at the informational updates and announcement section **Deliberative Process / Ex. 5**

Thanks!

Hannah Branning, MSc.
Special Assistant
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW MC 2201A
Washington, DC 20460

Office: (202) 564-3317 | Cell: **Ex. 6**

Message

From: Traylor, Patrick [traylor.patrick@epa.gov]
Sent: 2/9/2018 4:14:48 PM
To: Ferguson, Lincoln [ferguson.lincoln@epa.gov]
CC: Bodine, Susan [bodine.susan@epa.gov]
Subject: OECA Folder
Attachments: Enforcement Case Briefing (June 16, 2017).docx; LD Vehicle Oversight Briefing to the Administrator (January 18, 2018).pdf; Automotive Compliance under the CAA Briefing (January 18, 2018).docx; OECA Weekly Briefing (February 8, 2018).docx; FCA Settlement Talking Points (January 8, 2018).docx; FCA Settlement Timeline (January 8, 2018).docx; OECA Weekly Briefing (January 9, 2018).docx; OECA Weekly Briefing (December 19, 2017).docx; OECA Weekly Briefing (November 28, 2017).docx; OECA Weekly Briefing (November 21, 2017).docx; OECA Weekly Briefing (November 14, 2017).docx; Mitigation Policy Memorandum (November 13, 2017).pdf; OECA Weekly Briefing (November 7, 2017).docx; OECA Weekly Briefing (October 31, 2017).docx; OECA Weekly Briefing (October 25, 2017).docx; Enforcement Summary (September 1, 2017).pdf

Lincoln:

For the Administrator's OECA folder, please find attached all the written briefing materials we've given him since June 2017.

Patrick

Message

From: Burton, Tamika [burton.tamika@epa.gov]
Sent: 6/29/2018 8:44:45 PM
Subject: Weekly report 6.29.2018
Attachments: 6.29.2018.pdf; Weekly Report 6.29.2018.docx

Importance: High

Good Afternoon,
Please find the Weekly Report for the week ending 6.29.2018.

Have a great weekend!

Tamika Burton
Staff Assistant to the Deputy Administrator
Immediate Office of the Administrator
MC 1104A Room 3412 WJC North
(202) 564-4771 (d)

Personal Matters / Ex. 6

 (c)
burton.tamika@epa.gov



Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 6/29/2018 2:28:23 PM
To: Weekly Report Group [Weekly_Report_Group@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]; Branning, Hannah [Branning.Hannah@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]
Subject: OECA Weekly June 29, 2018
Attachments: OECA Weekly Report June 29 2018.docx

Attached is OECA's weekly report. Please let us know if you have any questions.

Thanks,

Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance
202-564-2440

Office of Enforcement and Compliance Assurance

Hot Topics:

Florida Developer Sentenced in Asbestos Case; Will Pay for Medical Monitoring of Exposed Workers

On June 22, 2018, Philip Farley was sentenced in the Middle District of Florida to 90 days of home confinement, an \$8,000 criminal fine, four years of probation, and 300 hours of community service. Farley will also pay \$250,000 in restitution to the University of Florida College of Public Health for an asbestos exposure surveillance fund for workers who were exposed during the renovation of the Urban Style Flats apartment complex. Farley was the developer of a 480-unit apartment complex in St. Petersburg, Florida. The purchase agreement for the apartment complex alerted Farley to the presence of asbestos in the building. Farley directed unprotected and untrained workers to renovate the buildings by dry-scraping textured ceiling material and breaking up floor tiles containing asbestos, which were then disposed of in a general waste dumpster and taken to the county incinerator. Farley pleaded guilty to negligently causing the release of asbestos.

Oil and Gas New Owner Audit Program Stakeholder Meetings

On June 28, 2018, OECA hosted a stakeholder meeting to help inform ongoing efforts to develop a New Owner Clean Air Act Audit Program tailored for the upstream oil and natural gas exploration and production sector. Participants include industry, environmental, state and tribal stakeholders. The stakeholder meetings are an opportunity for EPA to hear comment and discussion from stakeholders as the Agency continues to consider options for this program.

OECA and Georgia's Department of Agriculture Co-Host National Enforcement Pesticide Inspector Regulatory Training

OECA's Office of Compliance and Georgia's Department of Agriculture hosted over 45 state, tribal, and EPA pesticide inspectors from around the country in Savannah, Georgia to share best practices and to learn new skills. Classroom training sessions focused on inspections pertaining to the herbicide dicamba, inspector interviewing, report writing skills, communication, and enforcement. A field trip component also included a federal pesticide laboratory tour and a trip to a local nursery to perform a mock Worker Protection Standard inspection.

ECHO Updates Improve Features and Usability

OECA has improved the frequency for addressing user feedback and Agency Priorities in the Enforcement and Compliance History Online (ECHO) website. Some recent improvements include different ways to refine facility searches and customize search results, the ability to search for public drinking water systems that have had sanitary surveys, the option to search for facilities located in Census block groups within an 80th or higher national percentile of one or more of the primary environmental justice indexes of EJSCREEN, and the ability to review Clean Water Act Multi-Sector General Permit annual report data.

Upcoming Major Decisions and Events:

On July 11, 2018, the Acting Director of OECA's Federal Facilities Enforcement Office and other EPA leaders will attend the DOD/EPA semiannual meeting in Crystal City, Virginia. This engagement meeting was developed as part of Superfund Task Force Recommendation #41.

Message

From: Carroll, Carly [Carroll.Carly@epa.gov]
Sent: 5/4/2018 2:30:46 PM
Subject: Weekly Report for 05.04.18
Attachments: Weekly Report 05.04.2018.docx; Weekly Report 05.04.2018.pdf

Good morning,
Please find the weekly report for the week ending 05.04.18 attached.

Have a wonderful weekend.

Thank you,

Carly Carroll
Special Assistant to the Deputy Administrator
U.S. Environmental Protection Agency
(202) 564-2769
carroll.carly@epa.gov

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 5/3/2018 10:37:03 PM
To: Weekly Report Group [Weekly_Report_Group@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Patrick Traylor (traylor.patrick@epa.gov) [traylor.patrick@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Hannah Branning (Branning.Hannah@epa.gov) [Branning.Hannah@epa.gov]
Subject: OECA Weekly May 3, 2018
Attachments: OECA Weekly Report May 3 2018.docx

Attached is OECA's weekly report. Please let us know if you have any questions.

Susan

Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance
202-564-2440

Office of Enforcement and Compliance Assurance**Hot Topics:****Former CEO of Volkswagen AG Charged with Conspiracy and Wire Fraud in Diesel Emissions Scandal**

On May 3, 2018, Attorney General Jeff Sessions and EPA Administrator Scott Pruitt announced the indictment of Martin Winterkorn, the former CEO and chairman of the management board of Volkswagen AG (VW), with conspiracy and wire fraud in connection with VW's long-running scheme to cheat U.S. diesel vehicle emissions requirements. The indictment of Winterkorn represents the most recent charges in an ongoing investigation by EPA and DOJ into unprecedented emissions cheating by VW. In March 2017, VW pleaded guilty to criminal charges that it deceived U.S. regulatory agencies, by installing so-called defeat devices in diesel vehicles emissions control systems that were designed to cheat emissions tests, and has paid a criminal penalty of \$2.8 billion. Two former VW engineers, Oliver Schmidt and James Liang, pleaded guilty to participating in the conspiracy alleged in the indictment and are currently serving sentences of 84 months and 40 months in prison, respectively. Five additional defendants, including former VW executives and senior managers, were indicted in January 2017, but have not been apprehended. Finally, one former manager of VW's subsidiary Audi AG, Giovanni Pamio, an Italian citizen, has been charged by complaint and currently remains in Germany pending extradition.

Working with the Department of Defense on Drinking Water Protocol During National Emergencies

On May 1, 2018, OECA's Federal Facilities Enforcement Office managers and staff met with their Department of Defense (DOD) counterparts

Deliberative Process / Ex. 5	Deliberative Process / Ex. 5
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Association of State and Territorial Solid Waste Management Officials Mid-Year Meeting

On April 25 and 26, 2018, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) hosted its 2018 Mid-Year Meeting. Managers and staff from OECA attended the meeting, participating in several sessions to discuss projects that OECA has underway, including upcoming listening sessions on OECA sponsored Task Force recommendations, updated guidance on the disbursement of special account funds, the issuance of a new policy memorandum on agreements with third parties to support cleanup and reuse of National Priority List (NPL) sites, the development of a model Memorandum of Understanding to transfer certain NPL-eligible sites to states, implementing the National Enforcement Strategy for Corrective Action, and identifying best practices for coordination between EPA regions and states.

Upcoming Major Decisions and Events:

On Sunday, May 6, 2018, DAA Patrick Traylor will attend a meeting of the Interstate Oil and Gas Commission Compact (IOGCC) in Oklahoma City, Oklahoma where he will discuss with state commissioners EPA's new Clean Air Act audit program for oil and gas facilities. This audit program will provide additional flexibilities to the oil and natural gas sector based on the Agency's analysis of the sector's unique operations.

On May 7-9, 2018, OECA AA Susan Bodine and OECA PDAA Larry Starfield will travel to EPA Regions 9 and 10 to meet with the RAs/DRAs and senior enforcement managers in Regions 1 and 10 to discuss enforcement and compliance priorities and issues.

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 9/10/2018 9:54:45 PM
To: Hull, George [Hull.George@epa.gov]; Egan, Patrick [egan.patrick@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Patrick Traylor (traylor.patrick@epa.gov) [traylor.patrick@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Hannah Branning (Branning.Hannah@epa.gov) [Branning.Hannah@epa.gov]
Subject: FW: AA Wheeler Enforcement Speech Request
Attachments: Tlkg Pts for Administrator at CEEC 9-10-18.docx; Transition from National Enforcement Initiatives to National Compliance Initiatives (Aug. 21 2018).pdf; Interim OECA Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States (Jan. 22, 2018).pdf

Here is what I sent over.

From: Bodine, Susan
Sent: Monday, September 10, 2018 5:52 PM
To: Beach, Christopher <beach.christopher@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: AA Wheeler Enforcement Speech Request

These are long – but provide enough material for you to draw from.

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 9/10/2018 9:52:16 PM
To: Beach, Christopher [beach.christopher@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]
Subject: RE: AA Wheeler Enforcement Speech Request
Attachments: Tlkg Pts for Administrator at CEEC 9-10-18.docx; Transition from National Enforcement Initiatives to National Compliance Initiatives (Aug. 21 2018).pdf; Interim OECA Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States (Jan. 22, 2018).pdf

These are long – but provide enough material for you to draw from.

From: Beach, Christopher
Sent: Monday, September 10, 2018 5:31 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: AA Wheeler Enforcement Speech Request

Hi Susan and Patrick, sorry to bother, but circling back to see if you think these will be ready at some point today?

Thanks!
Chris

From: Beach, Christopher
Sent: Friday, September 7, 2018 11:06 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: AA Wheeler Enforcement Speech Request

That would be perfect. Thank you!

From: Bodine, Susan
Sent: Friday, September 7, 2018 10:18 AM
To: Beach, Christopher <beach.christopher@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: AA Wheeler Enforcement Speech Request

We can get you something by COB Monday.

From: Beach, Christopher
Sent: Friday, September 7, 2018 9:48 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: AA Wheeler Enforcement Speech Request

Susan and Patrick,

Happy Friday. AA Wheeler will be speaking to the Corporate Environmental Enforcement Council next week on Thursday. Their folks sent me four big picture topics that they would like to hear Wheeler's perspective on: cooperative federalism, limits on enforcement (fair and statutorily-focused enforcement), meaningful metrics, and compliance assistance. They mentioned that compliance assistance and metrics are the two hot topics for them right now. Would you be able to help provide some talkers on these issues? This is really

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

If there is anything else outside these four topics that you think we should include please feel free to do so.

Thanks!

Chris Beach
Speechwriter
U.S. EPA
202-322-9308

Deliberative Process / Ex. 5

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 10/1/2018 7:59:54 PM
To: Dickerson, Aaron [dickerson.aaron@epa.gov]
CC: Molina, Michael [molina.michael@epa.gov]; Patrick Traylor (traylor.patrick@epa.gov) [traylor.patrick@epa.gov]
Subject: Weekly Enforcement Briefing Paper
Attachments: OECA Weekly Briefing (October 2, 2018).pdf

Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance
202-564-2440

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 12/3/2018 9:54:52 PM
To: Dombrowski, John [Dombrowski.John@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]
CC: Palmer, Daniel [Palmer.Daniel@epa.gov]; McKeever, Michele [McKeever.Michele@epa.gov]; Knopes, Christopher [Knopes.Christopher@epa.gov]
Subject: RE: OECA's draft sections to EPA's FY18 Annual Performance Report
Attachments: FY 2018 draft APR ALL 11 26 18 DSP SPB edits.docx

I had a few comments in the attached (Author).

Susan

From: Dombrowski, John
Sent: Monday, December 3, 2018 3:58 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Palmer, Daniel <Palmer.Daniel@epa.gov>; McKeever, Michele <McKeever.Michele@epa.gov>; Knopes, Christopher <Knopes.Christopher@epa.gov>
Subject: OECA's draft sections to EPA's FY18 Annual Performance Report

Susan and Larry – OCFO is in the process of developing EPA's FY 18 Annual Performance Report, and attached are the draft OECA pieces of the APR that we have assembled with OC's comments (OCFO only provided us instructions to create these pieces/sections so we don't have an entire document for review).

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 however, it still needs to have AA-level review. Unfortunately we need to get this over to OCFO as soon as possible so they can include our draft sections in the overall Agency draft. There will be another chance for OECA to review this document – after OCFO has made its changes to what we put forward now, and after they have assembled the many pieces of the document into one complete, draft Agency APR.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please let us know if you have any questions, comments, or if you would like to discuss further. Also, please let us know if you are okay with us sending these comments over to OCFO now and then review it again when we get the complete document. Thx

John Dombrowski, P.E.
Deputy Director
Office of Compliance
Office of Enforcement and Compliance Assurance, U.S. EPA
WJC South, Room 5140A (within 5142 bay area)
202-566-0742 (Office)
202-365-8796 (Cell)

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 10/1/2018 5:36:08 PM
To: Traylor, Patrick [traylor.patrick@epa.gov]
Subject: RE: Weekly Briefing
Attachments: OECA Weekly Briefing (October 2 2018).docx

I made changes but did not redline

From: Traylor, Patrick
Sent: Monday, October 1, 2018 1:11 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Subject: Weekly Briefing

Susan:

I took a shot at drafting the briefing paper for tomorrow (attached).

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

If you'll send me your revisions, I'll finalize it prior to 4:00.

Patrick

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
Personal Matters / Ex. 6 (cell)

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 4/20/2018 3:40:13 PM
To: Hull, George [Hull.George@epa.gov]
CC: Chapman, Apple [Chapman.Apple@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]
Subject: Re: New OECA audit policy

Deliberative Process / Ex. 5

Sent from my iPhone

On Apr 20, 2018, at 10:37 AM, Hull, George <Hull.George@epa.gov> wrote:

Susan,

This is language that was developed by OCE for posting on our website.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please let me know what you

think. - George

Deliberative Process / Ex. 5

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 5/10/2018 10:49:56 PM
To: Ford, Hayley [ford.hayley@epa.gov]
CC: Lyons, Troy [lyons.troy@epa.gov]; Patrick Traylor (traylor.patrick@epa.gov) [traylor.patrick@epa.gov]
Subject: RE: Hearing Prep: OECA
Attachments: Enforcement talking points updated 5-10-18.docx

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 The rest he has seen before.



Enforcement
talking points up...

From: Ford, Hayley
Sent: Thursday, May 10, 2018 5:01 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Lyons, Troy <lyons.troy@epa.gov>
Subject: RE: Hearing Prep: OECA

If you think there is anything he needs before Wednesday's hearing, please either put together a briefer or we can find a few minutes on Monday. Thanks!

Hayley Ford

Deputy White House Liaison and Personal Aide to the Administrator
Environmental Protection Agency

ford.hayley@epa.gov

Phone: 202-564-2022

Cell: 2 **Personal Matters / Ex. 6**

-----Original Appointment-----

From: Bodine, Susan
Sent: Thursday, May 10, 2018 4:51 PM
To: Ford, Hayley; McMurray, Forrest; Seabaugh, Catherine
Subject: Declined: Hearing Prep: OECA
When: Tuesday, May 15, 2018 3:30 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Administrator's Office

We will be in Philadelphia on the 15th.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Self Audits

- As part of EPA’s priority to address noncompliance in an efficient and timely manner, applying a broad range of enforcement and compliance tools (see *e.g.*, Goal 3 in [EPA’s FY 2018-2022 Strategic Plan](#)), EPA is encouraging regulated entities to voluntarily discover, promptly disclose, expeditiously correct, and take steps to prevent recurrence of environmental violations.
- Already, about 545 companies a year notify EPA online of their self audits through EPA’s “eDisclosure” program.
- Dozens of new owners have acquired brought over 1,000 facilities into compliance with environmental regulations using EPA’s new owner audit policy.
 - For example, earlier this month, EPA resolved violations at a sand and gravel facility in West Virginia that had been unlawfully impacting a stream for 70 years. The new owner came to EPA and self-disclosed and took corrective action. EPA did not assess any penalty in this case.
- EPA is now looking for opportunities to increase the use of these policies.
- For example, in 2017 EPA worked with Range Resources to bring their newly acquired upstream oil and gas facilities into compliance through self audits and corrective action. EPA is developing a new owner program for the oil and gas industry using this settlement as a model.

Deliberative Process / Ex. 5

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 4/20/2018 3:18:02 PM
To: Daniell, Kelsi [daniell.kelsi@epa.gov]
CC: Hull, George [Hull.George@epa.gov]; Abboud, Michael [abboud.michael@epa.gov]
Subject: Re: Comment on new OECA audit policy

There is an Eand E reporter here and he way laid me
I told him I am not announcing a new policy today but will note in my remarks we are working on one
I speak at 1030

Sent from my iPhone

On Apr 20, 2018, at 8:59 AM, Daniell, Kelsi <daniell.kelsi@epa.gov> wrote:

Susan/George – We would like to provide Miranda with a response to her questions? Please note that her story is up, but she will add whatever comment we send. The sooner the better, let me know how I can help.

<http://thehill.com/policy/energy-environment/384078-epa-to-unveil-new-policy-aimed-at-avoiding-legal-action-over-oil>

Thanks!
Kelsi

From: Miranda Green [mailto:mgreen@thehill.com]
Sent: Thursday, April 19, 2018 10:03 PM
To: Press <Press@epa.gov>
Subject: Comment on new OECA audit policy

Hi,
I'm looking for comment on a new audit policy being developed under OECA aiming to give more flexibility for oil and gas industries to comply when self auditing.

Can EPA, or OECA comment on the position behind the new policy being determined?

Thank you,
Miranda

--

Miranda Green
Energy and Environment Reporter, The Hill

Ex. 6
mgreen@thehill.com
@mirandacgreen

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 4/20/2018 2:42:02 PM
To: Traylor, Patrick [traylor.patrick@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]
Subject: Fwd: Comment on new OECA audit policy

Sent from my iPhone

Begin forwarded message:

From: "Daniell, Kelsi" <daniell.kelsi@epa.gov>
Date: April 20, 2018 at 8:59:10 AM CDT
To: "Bodine, Susan" <bodine.susan@epa.gov>, "Hull, George" <Hull.George@epa.gov>
Cc: "Abboud, Michael" <abboud.michael@epa.gov>
Subject: FW: Comment on new OECA audit policy

Susan/George – We would like to provide Miranda with a response to her questions? Please note that her story is up, but she will add whatever comment we send. The sooner the better, let me know how I can help.

<http://thehill.com/policy/energy-environment/384078-epa-to-unveil-new-policy-aimed-at-avoiding-legal-action-over-oil>

Thanks!
Kelsi

From: Miranda Green [mailto:mgreen@thehill.com]
Sent: Thursday, April 19, 2018 10:03 PM
To: Press <Press@epa.gov>
Subject: Comment on new OECA audit policy

Hi,
I'm looking for comment on a new audit policy being developed under OECA aiming to give more flexibility for oil and gas industries to comply when self auditing.

Can EPA, or OECA comment on the position behind the new policy being determined?

Thank you,
Miranda

--

Miranda Green
Energy and Environment Reporter, The Hill

Ex. 6

mgreen@thehill.com
@mirandacgreen

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 9/14/2018 2:35:51 PM
To: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Swack, David [Swack.David@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]; Dombrowski, John [Dombrowski.John@epa.gov]; McKeever, Michele [McKeever.Michele@epa.gov]; Barnet, Henry [Barnet.Henry@epa.gov]; Mazakas, Pam [Mazakas.Pam@epa.gov]; Leff, Karin [Leff.Karin@epa.gov]; Muller, Marie [MULLER.MARIE@EPA.GOV]; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; DeLeon, Rafael [Deleon.Rafael@epa.gov]; Badalamente, Mark [Badalamente.Mark@epa.gov]
CC: Warren, JohnM [Warren.JohnM@epa.gov]; Strickland, Francine [Strickland.Francine@epa.gov]; James, Christina [james.christina@epa.gov]; McCray, Deborah [McCray.Deborah@epa.gov]; Toy, Nancy [Toy.Nancy@epa.gov]; Alston, Wanda [Alston.Wanda@epa.gov]; Pointer, Shereta [Pointer.Shereta@epa.gov]
Subject: RE: Draft OMB Presentation
Attachments: FY 2020 OMB Hearing First Draft 9-13-18.ppt

I made a few edits also to slides 3, 4, 5, and 7

From: Starfield, Lawrence
Sent: Thursday, September 13, 2018 10:48 PM
To: Swack, David <Swack.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Dombrowski, John <Dombrowski.John@epa.gov>; McKeever, Michele <McKeever.Michele@epa.gov>; Barnet, Henry <Barnet.Henry@epa.gov>; Mazakas, Pam <Mazakas.Pam@epa.gov>; Leff, Karin <Leff.Karin@epa.gov>; Muller, Marie <MULLER.MARIE@EPA.GOV>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; DeLeon, Rafael <Deleon.Rafael@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>
Cc: Warren, JohnM <Warren.JohnM@epa.gov>; Strickland, Francine <Strickland.Francine@epa.gov>; James, Christina <james.christina@epa.gov>; McCray, Deborah <McCray.Deborah@epa.gov>; Toy, Nancy <Toy.Nancy@epa.gov>; Alston, Wanda <Alston.Wanda@epa.gov>; Pointer, Shereta <Pointer.Shereta@epa.gov>
Subject: RE: Draft OMB Presentation

David,

Thanks for assembling the draft slide deck for OMB. I won't be in the office tomorrow, so I thought I'd send you a mark-up tonight (see attached).

A few points:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Larry

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

From: Swack, David

Sent: Thursday, September 13, 2018 5:51 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; Dombrowski, John <Dombrowski.John@epa.gov>; McKeever, Michele <McKeever.Michele@epa.gov>; Barnet, Henry <Barnet.Henry@epa.gov>; Mazakas, Pam <Mazakas.Pam@epa.gov>; Leff, Karin <Leff.Karin@epa.gov>; Muller, Marie <MULLER.MARIE@EPA.GOV>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; DeLeon, Rafael <Deleon.Rafael@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>

Cc: Warren, JohnM <Warren.JohnM@epa.gov>; Strickland, Francine <Strickland.Francine@epa.gov>; James, Christina <james.christina@epa.gov>; McCray, Deborah <Mccray.Deborah@epa.gov>; Toy, Nancy <Toy.Nancy@epa.gov>; Alston, Wanda <Alston.Wanda@epa.gov>; Pointer, Shereta <Pointer.Shereta@epa.gov>

Subject: Draft OMB Presentation

All,

Attached is a first cut at our OMB hearing slides. A few points I would offer:

Deliberative Process / Ex. 5

Thanks for your review. If we could get everyone's thoughts by COB tomorrow (Friday), we can have a new version around on Monday. Thanks in advance for your thoughts.

David

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 4/23/2018 5:21:36 PM
To: Hull, George [Hull.George@epa.gov]
Subject: RE: Your address Friday at EarthX
Attachments: Bodine EarthX Remarks 4-20-18.docx

Here are the remarks I gave

From: Hull, George
Sent: Monday, April 23, 2018 1:18 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Subject: RE: Your address Friday at EarthX

Deliberative Process / Ex. 5

From: Bodine, Susan
Sent: Monday, April 23, 2018 12:57 PM
To: Hull, George <Hull.George@epa.gov>
Subject: Fwd: Your address Friday at EarthX

Sent from my iPhone

Begin forwarded message:

From: Sean Reilly <sreilly@eenews.net>
Date: April 23, 2018 at 12:52:29 PM EDT
To: "Bodine.Susan@epa.gov" <Bodine.Susan@epa.gov>
Subject: Your address Friday at EarthX

Ms. Bodine:

I'm a D.C.-based colleague of Mike Lee, with whom you spoke Friday. Since you were introduced as someone who doesn't like to be surprised, I just wanted to let you know that we'll be running a follow-up story this afternoon that focuses on your comments about noncompliance. Also, I was wondering whether this was the first public event at which you've spoken since you became A.A. of OECA back in December. If you could let us know, I'd appreciate it.

Thanks very much,
Sean Reilly

Reporter
E&E News

Ex. 6

(Desk)
(Cell)

sreilly@eenews.net

Twitter: @SeanatGreenwire

E&E NEWS

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EarthX Law and Policy Symposium
Session 2: The Future for Sustainable and Ethical Corporate Decision-
Making
Susan Bodine Remarks
April 20, 2018

- Over the past 40 years, our society has evolved dramatically in terms of environmental awareness. Driven initially by the landmark laws passed by Congress to protect our air, water, land and public health, environmental protection is now continued and sustained by the collaborative efforts of states, businesses, private citizens, and federal agencies like the U.S. Environmental Protection Agency (EPA).
- EPA is at the center of these efforts. We respond to spills. We set protective standards that apply nationally. We identify technologies and practices to achieve those standards. And, often working with states as co-regulators, we help with compliance and take action to ensure that environmental standards are met.
- That last function is the role of EPA's Office of Enforcement and Compliance Assurance where I am proud to serve as the assistant administrator. EPA Administrator Scott Pruitt has made it very clear that companies must operate under the rule of law. It is my job to make sure his expectation is met. EPA has a lot of tools to achieve this, including compliance assistance, civil actions, administrative actions, informal actions, work-sharing with states, and – where appropriate – criminal fines and incarceration.
- My hope for this presentation is that I will reinforce the argument for sustainable and ethical corporate leadership with concrete examples of the damage that results in the absence of such leadership. I also will discuss some of the ways that EPA is working to help companies come into compliance with environmental regulations.
- At EPA, we see a wide variety of cases in which companies have violated environmental regulations. Generally, the underlying reason a violation has occurred falls into one of five categories:

- 1) A company was ignorant of the requirements;
- 2) A company does not have the capacity comply with the regulatory requirements;
- 3) One or more staff in a company felt pressure to deliver results and bypassed regulations to meet performance expectations; or
- 4) a company sought a strategic advantage over their competitors by choosing to violate the law.
- Where a company is ignorant of its legal responsibilities or does not have the capacity to comply with environmental regulations, we often will tailor the injunctive relief to help the company get back into compliance.
- To prevent these categories of cases and instead teach people about their obligations and to develop capacity, EPA has sponsored partnerships with industry, academic institutions, environmental groups, and other agencies sectors provide web-based Compliance Assistance Centers.
- In contrast to lack of knowledge or capacity, I have seen cases where the leadership of the company is driving its employees to make a profit, or to increase profits – and that pressure has resulted in situations where companies cut corners to save money.
- Of course, ultimately the money saved is lost in penalties and lost reputation, or even in debarment.
- Even sophisticated companies can fail to train its employees properly, resulting in misplaced priorities.
- For example, in February 2018, Tyson Poultry was sentenced to pay a \$2 million criminal fine after it spilled a strongly acidic feed supplement at one of its facilities. Spills are not usually a cause for a criminal action, but in this case, the company did not use a responsible contractor to do the cleanup. Instead, the company transported the spilled substance to a different Tyson

plant, where they discharged it into the municipal sewer, causing a massive fish kill.

- Also in February 2018, Dyno Nobel, an explosives manufacturer, pleaded guilty to violating CERCLA's reporting requirements following a release of 6 tons of ammonia from a facility in Oregon. The release occurred over the course of 3 days because the company kept on trying to restart its operations instead of focusing on the release. The ammonia adversely impacted people living nearby and the company impeded response efforts by failing to report it for a week.
- Because of this criminal action, EPA issued notices of suspension to DYNOL NOBEL, INC and DYNOL NOBEL HOLDINGS USA INC, related companies in the explosives manufacturing business. DYNOL NOBEL, INC has had multiple contracts with various federal departments, including Justice, Interior, Agriculture, and Homeland Security. The suspension imposes an immediate exclusion from receiving federal contracts and covered transactions.
- This next example really hits home the consequences of lack of corporate oversight. It arises from a 2012 explosion at an off-shore oil platform.
- Black Elk Energy had contracted with a company called Wood Group to manage and conduct production operations at one of their platforms off the coast of Louisiana. In November 2012 there was ongoing construction on the platform by a different contractor, Grand Isle Shipyards. Wood Group PSN supported the construction by issuing hot work permits for welding.
- However, on or about Nov. 10, 2012, the Wood Group Person-in-Charge, stopped issuing hot work permits and conducting all-hands safety meetings, and instead delegated the hot work permitting to a less experienced operator.
- On Nov. 16, 2012, Black Elk's employees did not ask if the proper safety checks had been made and told the construction workers to weld a pipe that still has oil. This led to a series of explosions and the death of 3 workers.

- According to an investigation of the incident, Wood Group’s operators at had trouble keeping up with inspections and maintenance on facilities they serviced. The office did not have sufficient labor and transportation, and the work was not always completed on time. The investigation concluded that the company and its contractors did not follow “proper safety precautions” and that workers who were “worried about losing their jobs if they raised safety concerns” did not call a halt to work “despite apparent anomalies.”
- Wood Group paid over \$9 million in criminal fines for falsely reporting over several years that personnel had performed safety inspections for negligently discharging oil into the Gulf of Mexico in violation of the Clean Water Act.
- Black Elk Energy Offshore was sentenced to pay over \$4 million for criminal negligence. According to the Houston Chronicle, fallout from the criminal charges meant that Black Elk's lenders reduced lines of credit and demanded more collateral. Black Elk started selling assets to raise cash and declared bankruptcy.
- Sometimes, an action is not ignorance, lack of capacity, or lack of training, or even negligence. Sometimes a company deliberately chooses to cheat and operate outside of the regulatory system – seeking to cut costs or gain market share or otherwise gain an advantage over their competitors.
- That is the Volkswagen story:
 - Rather than design their diesel vehicles to meet emissions standards for NOx, Volkswagen devised engine control software to “cheat” the EPA’s emissions tests. On the open road, their vehicles emitted up to 40 times the standard. For years they went undetected, in large part due to their concerted effort to cover up the misconduct. During this period, and based on their lies, they were able to get EPA approval to sell their vehicles, and they sold almost 600,000 of them to unwitting American citizens. They polluted our air, and they profited from it.
 - Once this conspiracy came to EPA’s attention, we took an unprecedented civil and criminal enforcement response. We secured

a way to get the offending vehicles off the road or fixed, we are mitigating the excess air pollution, we secured a record-setting penalty, and are requiring Volkswagen take steps to ensure it doesn't happen again.

- The company has paid \$4.3 billion in civil and criminal penalties. In December 2017, a Volkswagen senior manager was sentenced to 84 months in prison for his role in VW's scheme to sell diesel "clean diesel" vehicles containing software designed to cheat U.S. emissions tests. Their stock is down, their market share is down and they are facing antitrust claims in Germany. Truly, it does not pay to cheat.
- Another example are the allegations EPA has made against Fiat Chrysler Automobiles:
 - Modern vehicles run on computers. These computers have a hundred million lines of code that direct the vehicle and all its systems how to operate in all the conditions the vehicle will encounter in use.
 - EPA's complaint alleges that FCA employed software that reduces the effectiveness of emissions controls on their diesel Ram and Jeep vehicles. This doesn't happen during the prescribed emissions test, but does when the vehicle is in common driving conditions on the open road.
 - FCA never told the EPA about this software because we never would have approved it. EPA has alleged that FCA used defeat devices in its vehicles, and we are holding them accountable. For the last year, we have been in litigation with FCA to resolve these allegations.

The auto manufacturing sector is not the only sector where we have seen widespread fraud and cheating.

- In the renewable fuels area, we have seen a large number of companies who are making money off of the market for renewable fuels in illegal ways. Sometimes they run their feedstock through a process multiple times – creating new RINs each time for the same fuel. Sometimes they don't even

bother with the pretense and sell RINs without producing any fuel at all. We have sent a number of people to jail and recovered \$10s of millions of dollars in forfeitures in these cases.

- Where there is a profit-motive to cheat, and there is opportunity to hide the misconduct, there is a need for enforcement. Where EPA finds misconduct in the vehicle and engine industry, we are committed to get substantial civil penalties in order to deter the violator and others from future misconduct.
- The damage to companies that commit these types of violations can be extensive. In addition to the penalties they may pay under the law, their reputations with consumers may be damaged for years.
- These types of cases expose a lack of ethical leadership at the highest levels in these companies and it may be easy for some to dismiss them as extreme and something that wouldn't happen at your organization. I think this is where it is important to talk about the other two categories of violations I mentioned. That is in companies that commit violations because they are uniformed and companies whose staff commit violations to meet performance expectations.
- These companies can also suffer serious damage as a result of violations and it is important to recognize that these violations also occur due to a failure of ethical leadership. Sustainable and ethical leadership recognizes the importance of complying with the law and builds that understanding into the culture of the organization.
- It is leadership's responsibility to not only make ethical decisions, but also to communicate their expectations to all employees.
- So far I've given you examples of leadership failures and some of the bad outcomes of those decisions. I would also like to speak about how EPA wants to help companies come into compliance, which I hope will be another incentive for sustainable and ethical corporate leadership.

- While EPA will absolutely continue to uphold the rule of law, our goal is to bring companies into compliance using a broad range of enforcement and compliance tools.
- As part of that effort, EPA is renewing its emphasis on encouraging regulated entities to voluntarily discover, promptly disclose, expeditiously correct, and take steps to prevent recurrence of environmental violations.
- Specifically, EPA is taking steps to enhance and promote:
 - (a) its already highly successful online Audit Policy (and Small Business Compliance Policy) “eDisclosure” program;
 - (b) the additional flexibility that is available to new owners who self-disclose violations; and
 - (c) opportunities to increase compliance through use of existing self-disclosure policies or tailored self-disclosure programs (e.g., an Oil & Gas Sector Audit Program).
- EPA understands that there is a wide range of variability in the actions of those who violate the law -- from diligent corporations who happen to fall short in complying with complex requirements despite their best efforts -- to those who knowingly flout the law.
- We have a range of tools to deal with all noncompliance circumstances, from informal action to formal enforcement, and even criminal enforcement for the worst actors and violations.
- EPA’s self-disclosure policies offer significant benefits to responsible corporations and individuals. Those who do the right thing by finding their own noncompliance, promptly disclosing and fixing it, and taking steps to ensure it won’t recur, often get their entire civil penalty waived. Thousands of companies have taken this path, and in doing so have demonstrated their environmental stewardship and reduced the risk of damage to their company’s reputation that otherwise might occur.

- Let me now briefly highlight a few points about how EPA is implementing its self-disclosure policies:

- The eDisclosure system provides a centralized web-based portal to receive and automatically process self-disclosed civil environmental violations. Large and small businesses are quickly and efficiently disclosing and correcting many violations using *eDisclosure*. In the two years since launching eDisclosure, EPA has seen more than a 75% increase in the number of annual self-disclosures and a continuing comparable mix of disclosure types (with just over half involving EPCRA violations and almost half involving other environmental laws).

s

- To maintain and increase this momentum, EPA is publishing information to clarify some of the benefits of EPA's self-disclosure policies. We plan to supplement our 2015 eDisclosure FAQs, 2007 Audit Policy Frequently Asked Questions (FAQs), and 1997 Audit Policy Interpretive Guidance to address issues that the regulated community has raised to EPA. We believe that these steps should help to encourage even greater use of EPA's self-disclosure policies.
- The 2008 New Owner Audit Policy offers additional flexibility and incentives to new owners that want to make a "clean start" at their newly acquired facilities by addressing environmental noncompliance that began prior to their acquisition. Some of the policy's key incentives and areas of flexibility include, for example:
 - a. the ability of new owners to enter into audit agreements that incorporate disclosure reporting that is appropriate to their unique situation;
 - b. the waiver of economic benefit penalties that otherwise might apply to delayed expenditures; and
 - c. a more generous application of the Voluntary Discovery condition to allow consideration of all violations which otherwise would be ineligible for Audit Policy consideration because they are already

required to be identified through a legally mandated monitoring, sampling or auditing protocol, and thus not “voluntarily discovered.” (*e.g.*, to allow violations that would have been discovered pursuant to Clean Air Act Title V certification activities to be considered voluntarily discovered if the discloser enters into an audit agreement or discloses violations before the first instance when the Title V monitoring, sampling or auditing is required).

- Although dozens of new owners that have acquired over 1,000 facilities have availed themselves of the benefits of the New Owner Policy, we hope to encourage greater use of the policy by expanding our outreach and education efforts to the regulated community and other stakeholders. To the extent that interpretive issues arise during such efforts, we will supplement our FAQs and/or interpretive guidance as needed.
- The new owner policy can provide certainty for corporations.
- Just this month, EPA resolved violations at a sand and gravel facility in West Virginia that had been unlawfully operating in a stream for 70 years. The new owner came to EPA and self-disclosed and took corrective action. EPA did not assess any penalty in this case.
- That was a small company. In a case involving a larger company, in September 2016, Range Resources acquired new oil and gas field assets the Terryville Field of Louisiana. The company’s Environmental Compliance department began assessing compliance with all environmental laws and regulations at the facilities.
 - Range had to decide how to best correct the noncompliance taking into account enforcement exposure and operational needs to continue production.
 - Accordingly, Range committed to conducting an audit of all of the newly acquired facilities under EPA’s New Owner Audit Policy.
 - The New Owner Audit Policy provided flexibility for a company such as Range that acquired facilities to reach an agreement with EPA within nine months from the date of the transaction. It offered substantial

penalty mitigation in exchange for any self-disclosed violations and planned corrective action.

- EPA plans to use this experience as a template to enter into agreements with other new owners in the oil and gas sector.
- Self audits provide an opportunity to achieve prompt and cost-effective return to compliance, which will protect public health and the environment.
- I hope that my presentation has convinced you that developing and maintaining a culture of ethical corporate decision making is a smart strategy. And, my hope is that as part of that strategy, corporate leadership will build regulatory compliance into organizational culture. EPA is actively working to help companies understand and comply with regulations.

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To: Bodine, Susan [bodine.susan@epa.gov]
Subject: Bodine EarthX Remarks 4-17-18.docx
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EarthX Law and Policy Symposium
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Making
Susan Bodine Opening Remarks
April 20, 2018

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- EPA is at the center of these efforts. We respond to spills. We set protective standards that apply nationally. We identify technologies and practices to achieve those standards. And, often working with states as co-regulators, we help with compliance and take action to ensure that environmental standards are met.
- That last function is the role of EPA's Office of Enforcement and Compliance Assurance where I am proud to serve as the assistant administrator. EPA Administrator Scott Pruitt has made it very clear that companies must operate under the rule of law. It is my job to make sure his expectation is met. EPA has a lot of tools to achieve this, including compliance assistance, civil actions, administrative actions, informal actions, work-sharing with states, and – where appropriate – criminal fines and incarceration.
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- Where a company is ignorant of its legal responsibilities or does not have the capacity to comply with environmental regulations, we often will tailor the injunctive relief to help the company get back into compliance.
- To prevent these categories of cases and instead teach people about their obligations and to develop capacity, EPA has sponsored partnerships with industry, academic institutions, environmental groups, and other agencies sectors provide web-based Compliance Assistance Centers.
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- Of course, ultimately the money saved is lost in penalties and lost reputation, or even in debarment.
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- For example, in February 2018, Tyson Poultry was sentenced to pay a \$2 million criminal fine after it had an acid spill at one of its facilities and disposed of the spilled substance by discharging it into the municipal sewer, causing a massive fish kill.

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- On April 27, 2018, the EPA Suspension and Debarment Official issued notices of suspension to DYNOL NOBEL, INC and DYNOL NOBEL HOLDINGS USA INC, related companies in the explosives manufacturing business. DYNOL NOBEL, INC has had multiple contracts with various federal departments, including Justice, Interior, Agriculture, and Homeland Security. The suspensions are based on a criminal Bill of Information and a Plea Agreement in which DYNOL NOBEL, INC was charged with, and admitted to, one CERCLA count of failing to immediately notify the National Response Center as soon as Respondent had knowledge of non-permitted releases of a reportable quantity of anhydrous ammonia (over 6 tons in this case) from its Saint Helens Plant in Oregon. The suspension imposes an immediate exclusion from receiving federal contracts and covered transactions to protect the public interest pending completion of legal proceedings.
- Sometimes, an action is not ignorance, lack of capacity, or lack of training. Sometimes a company deliberately chooses to cheat and operate outside of the regulatory system – seeking to cut costs or gain market share or otherwise gain an advantage over their competitors.
- That is the Volkswagen story:
 - Rather than design their diesel vehicles to meet emissions standards for NOx, Volkswagen devised engine control software to “cheat” the EPA's emissions tests. On the open road, their vehicles emitted up to 40 times the standard. For years they went undetected, in large part due to their concerted effort to cover up the misconduct. During this period, and based on their lies, they were able to get EPA approval to sell their vehicles, and they sold almost 600,000 of them to unwitting American citizens. They polluted our air, and they profited from it.

- Once this conspiracy came to EPA's attention, we took an unprecedented civil and criminal enforcement response. We secured a way to get the offending vehicles off the road or fixed, we are mitigating the excess air pollution, we secured a record-setting penalty, and are requiring Volkswagen take steps to ensure it doesn't happen again.
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 - FCA never told the EPA about this software because we never would have approved it. EPA has alleged that FCA used defeat devices in its vehicles, and we are holding them accountable. For the last year, we have been in litigation with FCA to resolve these allegations.

The auto manufacturing sector is not the only sector where we have seen widespread fraud and cheating.

- In the renewable fuels area, we have seen a large number of companies who are making money off of the market for renewable fuels in illegal ways.

Sometimes they run their feedstock through a process multiple times – creating new RINs each time for the same fuel. Sometimes they don't even bother with the pretense and sell RINs without producing any fuel at all. We have sent a number of people to jail and recovered \$10s of millions of dollars in forfeitures in these cases.

- Where there is a profit-motive to cheat, and there is opportunity to hide the misconduct, there is a need for enforcement. Where EPA finds misconduct in the vehicle and engine industry, we are committed to get substantial civil penalties in order to deter the violator and others from future misconduct.
- The damage to companies that commit these types of violations can be extensive. In addition to the penalties they may pay under the law, their reputations with consumers may be damaged for years.
- These types of cases expose a lack of ethical leadership at the highest levels in these companies and it may be easy for some to dismiss them as extreme and something that wouldn't happen at your organization. I think this is where it is important to talk about the other two categories of violations I mentioned. That is in companies that commit violations because they are uniformed and companies whose staff commit violations to meet performance expectations.
- These companies can also suffer serious damage as a result of violations and it is important to recognize that these violations also occur due to a failure of ethical leadership. Sustainable and ethical leadership recognizes the importance of complying with the law and builds that understanding into the culture of the organization.
- It is leadership's responsibility to not only make ethical decisions, but also to communicate their expectations to all employees.
- So far I've given you examples of leadership failures and some of the bad outcomes of those decisions. I would also like to speak about how EPA wants to help companies come into compliance, which I hope will be another incentive for sustainable and ethical corporate leadership.

- While EPA will absolutely continue to uphold the rule of law, our goal is to bring companies into compliance using a broad range of enforcement and compliance tools.
- As part of that effort, EPA recently renewed its emphasis on encouraging regulated entities to voluntarily discover, promptly disclose, expeditiously correct, and take steps to prevent recurrence of environmental violations.
- Specifically, EPA is taking steps to enhance and promote:
 - (a) its already highly successful online Audit Policy (and Small Business Compliance Policy) “eDisclosure” program;
 - (b) the additional flexibility that is available to new owners who self-disclose violations; and
 - (c) opportunities to increase compliance through use of existing self-disclosure policies or tailored self-disclosure programs (e.g., an Oil & Gas Sector Audit Program).
- EPA understands that there is a wide range of variability in the actions of those who violate the law -- from diligent corporations who happen to fall short in complying with complex requirements despite their best efforts -- to those who knowingly flout the law.
- We have a range of tools to deal with all noncompliance circumstances, from informal action to formal enforcement, and even criminal enforcement for the worst actors and violations.
- EPA’s self-disclosure policies offer significant benefits to responsible corporations and individuals. Those who do the right thing by finding their own noncompliance, promptly disclosing and fixing it, and taking steps to ensure it won’t recur, often get their entire civil penalty waived. Thousands of companies have taken this path, and in doing so have demonstrated their environmental stewardship and reduced the risk of damage to their company’s reputation that otherwise might occur.

- Let me now briefly highlight a few points about how EPA is implementing its self-disclosure policies:
 - The eDisclosure system provides a centralized web-based portal to receive and automatically process self-disclosed civil environmental violations. Large and small businesses are quickly and efficiently disclosing and correcting many violations using *eDisclosure*. In the two years since launching eDisclosure, EPA has seen more than a 75% increase in the number of annual self-disclosures and a continuing comparable mix of disclosure types (with just over half involving EPCRA violations and almost half involving other environmental laws).
 - To maintain and increase this momentum, EPA just published several Qs & As to clarify some of the benefits of EPA's self-disclosure policies. We plan to supplement our 2015 eDisclosure FAQs, 2007 Audit Policy Frequently Asked Questions (FAQs), and 1997 Audit Policy Interpretive Guidance to address issues that the regulated community has raised to EPA. We believe that these steps should help to encourage even greater use of EPA's self-disclosure policies.
 - The 2008 New Owner Audit Policy offers additional flexibility and incentives to new owners that want to make a "clean start" at their newly acquired facilities by addressing environmental noncompliance that began prior to their acquisition. Some of the policy's key incentives and areas of flexibility include, for example:
 - a. the ability of new owners to enter into audit agreements that incorporate disclosure reporting that is appropriate to their unique situation;
 - b. the waiver of economic benefit penalties that otherwise might apply to delayed expenditures; and
 - c. a more generous application of the Voluntary Discovery condition to allow consideration of all violations which otherwise would be ineligible for Audit Policy consideration because they are already

required to be identified through a legally mandated monitoring, sampling or auditing protocol, and thus not “voluntarily discovered.” (*e.g.*, to allow violations that would have been discovered pursuant to Clean Air Act Title V certification activities to be considered voluntarily discovered if the discloser enters into an audit agreement or discloses violations before the first instance when the Title V monitoring, sampling or auditing is required).

- Although dozens of new owners that have acquired over 1,000 facilities have availed themselves of the benefits of the New Owner Policy, we hope to encourage greater use of the policy by expanding our outreach and education efforts to the regulated community and other stakeholders. To the extent that interpretive issues arise during such efforts, we will supplement our FAQs and/or interpretive guidance as needed.
- The new owner policy can provide certainty for corporations.
- Just this month, EPA resolved violations at a sand and gravel facility in West Virginia that had been unlawfully operating in a stream for 70 years. The new owner came to EPA and self-disclosed and took corrective action. EPA did not assess any penalty in this case.
- That was a small company. In a case involving a larger company, in September 2016, Range Resources acquired new oil and gas field assets the Terryville Field of Louisiana. The company’s Environmental Compliance department began assessing compliance with all environmental laws and regulations at the facilities.
 - Based on initial review, Range believed that noncompliance at its newly-acquired facilities was fairly widespread, and set out to identify specific noncompliance using more accurate information based on actual sampling and modeling (the inherited data and regulatory determinations were believed to be unreliable)
 - Range had to decide how to best correct the noncompliance taking into account enforcement exposure and operational needs to continue production.

- Accordingly, Range committed to conducting an audit of all of the newly acquired facilities under EPA's New Owner Audit Policy.
- The New Owner Audit Policy provided flexibility for a company such as Range that acquired facilities to reach an agreement with EPA within nine months from the date of the transaction. It offered substantial penalty mitigation in exchange for any self-disclosed violations and planned corrective action.
- Based on this experience, EPA is currently developing a **New Owner Clean Air Act Audit Program tailored for the Oil and Gas Sector**. This program will be separate from the New Owner Audit Policy and will provide additional flexibilities to the regulated community.
- Details are still being worked out, but a key component of the program will be a requirement that companies assess tank battery vapor control system design as part of the audit process. We view this as an opportunity to achieve prompt and cost-effective return to compliance, which will protect public health and the environment.
- I hope that my presentation has convinced you that developing and maintaining a culture of ethical corporate decision making is a smart strategy. And, my hope is that as part of that strategy, corporate leadership will build regulatory compliance into organizational culture. EPA is actively working to help companies understand and comply with regulations.

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 4/20/2018 6:30:22 PM
To: Hull, George [Hull.George@epa.gov]
CC: Chapman, Apple [Chapman.Apple@epa.gov]
Subject: Re: Draft Statement on Audit Policy for Oil +Gas

Also send the final statement to the e&e reporter here
Mlee@eenews.com

Sent from my iPhone

On Apr 20, 2018, at 1:12 PM, Hull, George <Hull.George@epa.gov> wrote:

Susan and Apple,
Per our phone conversations, please find below a draft statement for your review and approval to respond to The Hill. Thanks, George

Deliberative Process / Ex. 5

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 4/18/2018 5:25:45 PM
To: Payne, James [payne.james@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]
Subject: RE: Filling in for Matt Leopold this Fri at Texas Earth Day legal symposium - talking points

I think your panel is regulatory. But I would anticipate questions about the sue and settle guidance -- which relates to defensive litigation.

I provided the following overview of my remarks. I was asked to extend my remarks to 30 minutes so I may also touch on the interim guidance we sent out on working with states on enforcement matters:

- I will reinforce the argument for sustainable and ethical corporate leadership with concrete examples of the damage that results in the absence of such leadership. I also will discuss some of the ways that EPA is working to help companies come into compliance with environmental regulations.
- At EPA, we see a wide variety of cases in which companies have violated environmental regulations. Generally, the underlying reason a violation has occurred falls into one of four categories: 1) A company was ignorant of the requirements; 2) a company does not have the capacity comply with the regulatory requirements; 3) one or more staff in a company felt pressure to deliver results and bypassed regulations to meet performance expectations; or 3) the leadership of the company sought a strategic advantage over their competitors by choosing to violate the law.
- I will provide generic examples in the first three categories and then specific examples in the third (VW settlement and FCA complaint).
- Compliance assistance or smaller penalties may be appropriate for smaller companies lacking knowledge or capacity.
- However, EPA will take aggressive enforcement against companies that choose to operate outside the law.
- The damage to companies that make this choice can be extensive. In addition to the penalties they may pay under the law, their reputations with consumers may be damaged for years.
- Sustainable and ethical leadership must recognize the importance of complying with the law and build that into the culture of the organization.
- While EPA will absolutely continue to uphold the rule of law, our goal is to bring companies into compliance using a broad range of enforcement and compliance tools. Here are some tools we making available to help companies come into compliance:
 - o eDisclosure System
 - o New Owner Audit Policy
 - o New Owner Clean Air Act Audit Program tailored for the Oil and Gas Sector
- Developing and maintaining a culture of ethical corporate decision making is a smart strategy. EPA is actively working to help companies understand and comply with regulations.

-----Original Message-----

From: Payne, James
Sent: Wednesday, April 18, 2018 1:16 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: Filling in for Matt Leopold this Fri at Texas Earth Day legal symposium - talking points

Hi Susan, Larry, Patrick,

Looking forward to seeing you all tomorrow in Dallas!

I've just been asked to fill in for Matt Leopold for his talk this Friday at Texas Earth Day legal symposium in Dallas, since he cannot make the trip after all. Susan and Anne Idsal of course also are speakers.

I'm writing as I'd welcome seeing any planned talking points for Susan for this Friday, as they could be a reference for helping ensure consistency. Although I believe I already have a good sense.

Would also welcome any other sample materials or talking points you might suggest. My focus will be on the counseling/program side, since Susan and Anne of course will presumably include main focuses on enforcement and Region 6, respectively. I have a recent sample of Matt's talking points and am also in touch w other RCs for recent materials.

Larry, flagging that the panel moderator for this Friday is Jim Morriss, who said he plans to use the same broad panel questions he used for a panel w you and others last Fall. Would welcome any materials/suggestions that come to mind from that event.

Jim
214-665-8170

Ex. 6 cell

Sent from my iPhone

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 4/20/2018 5:15:07 PM
To: Hull, George [Hull.George@epa.gov]
CC: Traylor, Patrick [traylor.patrick@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]
Subject: Re: New OECA audit policy

Please find out from Rosemarie what the plan is for announcing the refresh

Sent from my iPhone

On Apr 20, 2018, at 10:42 AM, Hull, George <Hull.George@epa.gov> wrote:

I wasn't going to give a green light to post without checking with you. - George

From: Bodine, Susan
Sent: Friday, April 20, 2018 11:41 AM
To: Hull, George <Hull.George@epa.gov>
Cc: Traylor, Patrick <traylor.patrick@epa.gov>
Subject: Re: New OECA audit policy

Deliberative Process / Ex. 5

Sent from my iPhone

On Apr 20, 2018, at 10:37 AM, Hull, George <Hull.George@epa.gov> wrote:

Susan,

Deliberative Process / Ex. 5

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 5/10/2018 4:53:17 PM
To: Traylor, Patrick [traylor.patrick@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]
Subject: RE: Audit Refresh - proposed revisions

OK

From: Traylor, Patrick
Sent: Thursday, May 10, 2018 12:41 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: RE: Audit Refresh - proposed revisions

Susan, please see the attached redline that includes Larry's and my revisions for your review, comment, and approval.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
Ex. 6 (cell)

From: Starfield, Lawrence
Sent: Thursday, May 10, 2018 12:15 PM
To: Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Bodine, Susan <bodine.susan@epa.gov>
Subject: RE: Audit Refresh - proposed revisions

Sounds good. Thanks.

From: Traylor, Patrick
Sent: Thursday, May 10, 2018 12:09 PM
To: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Cc: Bodine, Susan <bodine.susan@epa.gov>
Subject: Re: Audit Refresh - proposed revisions

Thanks, Larry.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
Ex. 6 (cell)

On May 10, 2018, at 11:33 AM, Starfield, Lawrence <Starfield.Lawrence@epa.gov> wrote:

Patrick,

After reviewing the revised "Audit Policy Refresh" piece, I called Amy Porter to thank her. I thought the revisions were clearer and more powerful.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Larry

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

From: Porter, Amy

Sent: Monday, May 07, 2018 6:04 PM

To: Bodine, Susan <bodine.susan@epa.gov>

Cc: Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Hull, George <Hull.George@epa.gov>; Senn, John <Senn.John@epa.gov>; Milton, Philip <Milton.Philip@epa.gov>; Jonesi, Gary <Jonesi.Gary@epa.gov>

Subject: Audit Refresh - proposed revisions

Susan –

Please find attached a revised Audit Policy "Refresh" piece that we hope is responsive to your concerns

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

See also below a very short summary paragraph to be posted at the top of our [Audit Policy](#) and [New Owner](#) and [eDisclosure](#) public web pages.

Deliberative Process / Ex. 5

Please let me know if you would like to discuss.

Thank you,
Amy

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

<Refresh Announcement for Disclosures 5-7-18 clean.docx>

<Refresh Announcement for Disclosures 5-7-18 redline.docx>

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 4/18/2018 4:15:45 PM
To: Civins, Jeff [Jeff.Civins@haynesboone.com]; De Monaco, Charles A. [CDeMonaco@foxrothschild.com]; Sarda, Bruno [Bruno.Sarda@nrg.com]; bob@perciasepe.org
CC: Hull, George [Hull.George@epa.gov]; Bruce.Fogerty@earthx.org
Subject: RE: EARTHx Law and Policy Symposium--Session 2--Sustainability Discussion
Attachments: Susan Bodine bio.docx

30 minutes is fine.

Bio attached.

From: Civins, Jeff [mailto:Jeff.Civins@haynesboone.com]
Sent: Wednesday, April 18, 2018 12:08 AM
To: Bodine, Susan <bodine.susan@epa.gov>; De Monaco, Charles A. <CDeMonaco@foxrothschild.com>; Sarda, Bruno <Bruno.Sarda@nrg.com>; bob@perciasepe.org
Cc: Hull, George <Hull.George@epa.gov>; Bruce.Fogerty@earthx.org
Subject: Re: EARTHx Law and Policy Symposium--Session 2--Sustainability Discussion

And, of course, there is the overarching question of how does a company go about integrating sustainability and ethics into corporate decision-making?

Sent from my iPhone

On Apr 17, 2018, at 10:35 PM, Civins, Jeff <Jeff.Civins@haynesboone.com> wrote:

Session 2 speakers,

I am excited you will be participating in this session and look forward to meeting each of you. It should be a great discussion. Here's the follow-up email I promised. For those of you who will be at Thursday evening's dinner, we can discuss further then. In the meantime, we can share idea by email replying to all.

We have 90 minutes to work with, which we should have no trouble filling. We were contemplating up to 30 minutes for Susan's keynote presentation. Susan, is that OK with you? We then would transition to the panel discussion, with each panelist speaking for around 5-7 minutes, with the remainder of the time for questions--by me, each other, and/or the attendees. Susan, you're invited to participate in those discussions.

As to logistics, please provide me brief bios of pertinent info for me to introduce you and let me know if there's anything in particular you'd like me to mention. We're not asking for power points, but if there are slides you'd like to use, please let me know.

As to our substantive discussion, below this email is one from Susan, with bullet points outlining her remarks. As you will see, Susan's outline covers all the bases she discussed on our call and perfectly sets up our panel discussion. Panelists, please let us know what you'd like to cover in your opening remarks and any questions you'd like the panel to discuss thereafter. Immediately below are some possible questions to prime the pump. Attached is a power point that formed the basis for some of those questions and that might suggest some others.

- What is the relevance of the sentencing guidelines and how they relates to the establishment of a corporate compliance program? See e.g. https://www.pli.edu/product_files/Titles%2F2470%2F%23205998_02_Corporate_Compliance_Answer_Book_2018_P3_20170915151415.pdf Charles, I believe you mentioned this topic.
- How could the Volkswagen diesel fiasco have occurred? What should the company have done to prevent that type of behavior?
- What were the economic and reputations damages VW incurred?
- Why do companies choose to go beyond compliance and implement programs to become sustainable? E.g., the marketplace and stakeholders, like shareholders, employees, management, customers, insurers, lenders, investors, and regulators, and the fact that many companies are multinationals.
- Should companies be driven only by the marketplace or are there ethical reasons for companies to be sustainable even if it doesn't result in a cost benefit?
- What is meant by the terms sustainability and corporate social responsibility? Our focus is on environmental, but the terms also connote economic and social considerations.
- Focusing on environmental considerations, what are the elements of sustainability, e.g., minimize, reuse, and recycle waste, use and generate less toxic materials, minimize use of water, energy, and natural resources, reduce the footprint on the environment, manage carbon.
- What metrics if any are there to measure sustainability?
- How can we compare costs and benefits of different elements of sustainability or to take into account tradeoffs, e.g., solar and wind power generate no carbon but impact land and land use as well as birds.
- Are there dangers resulting from a focus on one as opposed to others, e.g., many underdeveloped countries rely on fossil fuels and cannot be weaned off them without adversely affecting their citizens' standard of living?
- How should companies measure and report their sustainability efforts?
- What environmental risks are companies required to disclose? What are the risks of overpromising, e.g., green washing, and understating? Perhaps touch on the litigation against Exxon. See e.g. <https://www.bloomberg.com/news/articles/2017-09-12/exxon-s-records-refusal-rejected-by-court-in-n-y-climate-probe>

haynesboone

Jeff Civins

Senior Counsel

jeff.civins@haynesboone.com

Haynes and Boone, LLP

600 Congress Avenue

Suite 1300

Austin, TX 78701-3285

(t) Ex. 6

From: Bodine, Susan [<mailto:bodine.susan@epa.gov>]

Sent: Tuesday, April 17, 2018 4:50 PM

To: Civins, Jeff

Cc: Hull, George

Subject: RE: EARTHx Law and Policy Symposium

You asked for a few bullet points outlining my remarks:

- I will reinforce the argument for sustainable and ethical corporate leadership with concrete examples of the damage that results in the absence of such leadership. I also will discuss some of the ways that EPA is working to help companies come into compliance with environmental regulations.
- At EPA, we see a wide variety of cases in which companies have violated environmental regulations. Generally, the underlying reason a violation has occurred falls into one of four categories: 1) A company was ignorant of the requirements; 2) a company does not have the capacity comply with the regulatory requirements; 3) one or more staff in a company felt pressure to deliver results and bypassed regulations to meet performance expectations; or 3) the leadership of the company sought a strategic advantage over their competitors by choosing to violate the law.
- I will provide generic examples in the first three categories and then specific examples in the third (VW settlement and FCA complaint).
- Compliance assistance or smaller penalties may be appropriate for smaller companies lacking knowledge or capacity.
- However, EPA will take aggressive enforcement against companies that choose to operate outside the law.
- The damage to companies that make this choice can be extensive. In addition to the penalties they may pay under the law, their reputations with consumers may be damaged for years.
- Sustainable and ethical leadership must recognize the importance of complying with the law and build that into the culture of the organization.
- While EPA will absolutely continue to uphold the rule of law, our goal is to bring companies into compliance using a broad range of enforcement and compliance tools. Here are some tools we making available to help companies come into compliance:
 - eDisclosure System
 - New Owner Audit Policy
 - New Owner Clean Air Act Audit Program tailored for the Oil and Gas Sector

- Developing and maintaining a culture of ethical corporate decision making is a smart strategy. EPA is actively working to help companies understand and comply with regulations.

<W&L PPT.pptx>

CONFIDENTIALITY NOTICE: This electronic mail transmission is confidential, may be privileged and should be read or retained only by the intended recipient. If you have received this transmission in error, please immediately notify the sender and delete it from your system.

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 5/21/2018 2:32:23 PM
To: Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]
Subject: RE: Tribal Outreach on O&G audit program

We will follow the team's recommendation.

Susan

From: Kelley, Rosemarie
Sent: Monday, May 21, 2018 10:30 AM
To: Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Subject: RE: Tribal Outreach on O&G audit program

Deliberative Process / Ex. 5

Rosemarie

From: Traylor, Patrick
Sent: Friday, May 18, 2018 12:03 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Subject: RE: Tribal Outreach on O&G audit program

BTW, Jim Kenney sent out the announcement to O&G stakeholders (ECOS, IOGCC, O&G invitees (including a couple of tribes)), so he might be a logical candidate to send out the notice to tribes we discussed yesterday.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)

Ex. 6

 (cell)

From: Kelley, Rosemarie
Sent: Thursday, May 17, 2018 10:13 AM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Theis, Joseph <Theis.Joseph@epa.gov>; Porter, Amy <Porter.Amy@epa.gov>; OKeefe, Susan <OKeefe.Susan@epa.gov>; Binder, Jonathan <Binder.Jonathan@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>
Subject: Tribal Outreach on O&G audit program

Susan—

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

When released on May 4, we committed to “conducting outreach and seeking feedback from states, tribes, the regulated community” among others until June 4. Also on May 4, Jim Kenney sent an email to all those invited to the February 2018 oil and gas roundtable letting them know that the Draft Agreement was available for comment; he provided a link to the document. Two tribes had been invited to the roundtable and thus were sent that email - the Ute Tribe and the Mandan, Hidatsa and Arikara (MHA) Nation (aka the Three Affiliated Tribes).

Last week, Jonathan Binder, OECA’s Tribal Consultation Advisor, received an inquiry from the American Indian Environmental Office (AIEO) staff asking if OECA plans to conduct consultation with tribes on the Draft Agreement. Given that the Draft Agreement is now out for public comment, we should consider the following:

Deliberative Process / Ex. 5

Rosemarie

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 10/11/2018 3:30:57 PM
To: Hull, George [Hull.George@epa.gov]
CC: Patrick Traylor (traylor.patrick@epa.gov) [traylor.patrick@epa.gov]; Egan, Patrick [egan.patrick@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]
Subject: enforcement talking points
Attachments: Tlkg Pts for Administrator at CEEC 9-10-18.docx; Susan_newsletter_draft 6 22 18 (+CS edits) clean copy.docx

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 4/17/2018 9:49:35 PM
To: Civins, Jeff [Jeff.Civins@haynesboone.com]
CC: Hull, George [Hull.George@epa.gov]
Subject: RE: EARTHx Law and Policy Symposium

You asked for a few bullet points outlining my remarks:

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 - New Owner Audit Policy
 - New Owner Clean Air Act Audit Program tailored for the Oil and Gas Sector
- Developing and maintaining a culture of ethical corporate decision making is a smart strategy. EPA is actively working to help companies understand and comply with regulations.

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 4/17/2018 9:36:06 PM
To: Hull, George [Hull.George@epa.gov]
Subject: RE: EarthX Talking Points

This is good. I am going to add examples of the other two categories (without naming names).

From: Hull, George
Sent: Tuesday, April 17, 2018 5:11 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Subject: EarthX Talking Points

Susan,

Please find attached the draft talking points for your EarthX presentation. Also, below are some central talking points/topics derived from the attached document. I thought that you could send these to the session's organizer, per his request.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 3/20/2018 8:12:20 PM
To: Traylor, Patrick [traylor.patrick@epa.gov]
Subject: RE: Inquiry from Bloomberg on
Attachments: final_-_written_case_study_2_-_new_owner_policy_self_disclosure_website.pdf

Deliberative Process / Ex. 5

From: Traylor, Patrick
Sent: Tuesday, March 20, 2018 3:32 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Subject: RE: Inquiry from Bloomberg on

Deliberative Process / Ex. 5

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)

Ex. 6 (cell)

From: Bodine, Susan
Sent: Tuesday, March 20, 2018 2:30 PM
To: Traylor, Patrick <traylor.patrick@epa.gov>
Subject: Re: Inquiry from Bloomberg on

Deliberative Process / Ex. 5

Sent from my iPhone

On Mar 20, 2018, at 3:03 PM, Traylor, Patrick <traylor.patrick@epa.gov> wrote:

Deliberative Process / Ex. 5

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)

Ex. 6 (cell)

Begin forwarded message:

From: "Hull, George" <Hull.George@epa.gov>
Date: March 20, 2018 at 1:55:18 PM CDT
To: "Traylor, Patrick" <traylor.patrick@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>
Cc: "Senn, John" <Senn.John@epa.gov>
Subject: Inquiry from Bloomberg on

Susan, Larry and Patrick,

Amena Saiyid of Bloomberg Environment sent us the questions below regarding the Clean Air Act Audit Program for the Oil and Gas Sector. I pulled from the briefing memo that Apple prepared for Susan. I then ran the draft response by Apple. Please let me know if this is on target and if you have any edits.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Reporter's Questions:

I want to know how this owner audit policy will be tweaked to accommodate the oil and gas producers. Who uses this policy right now and will this just apply to owners of new oil and gas assets or existing ones?

Is this initiative part of the agency's overall push to streamline operations that have been spearheaded by Mr. Darwin?

Also, what do companies get in return for self auditing? According to the epa audit page, it says absolution from penalties.

Draft Response:

Deliberative Process / Ex. 5

From: Traylor, Patrick
Sent: Tuesday, March 20, 2018 11:17 AM

To: Hull, George <Hull.George@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: Re: Follow up questions based on Mr. Traylor's presentation this morning on EPA's new compliance initiative

Deliberative Process / Ex. 5

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
Ex. 6 (cell)

On Mar 20, 2018, at 10:13 AM, Hull, George <Hull.George@epa.gov> wrote:

Hi Patrick,
I can work on getting draft answers to Amena Saiyid's questions. Is there a particular attorney/manager who I should work with here in Headquarters? - George

From: Saiyid, Amena [<mailto:asaiyid@bloombergenvironment.com>]
Sent: Tuesday, March 20, 2018 10:06 AM
To: Hull, George <Hull.George@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: Follow up questions based on Mr. Traylor's presentation this morning on EPA's new compliance initiative
Importance: High

Good Morning George,
Per Mr. Traylor's instructions I am sending you my questions regarding the initiative he spoke about a few minutes ago. I want to know how this owner audit policy will be tweaked to accommodate the oil and gas producers. Who uses this policy right now and will this just apply to owners of new oil and gas assets or existing ones.
Is this initiative part of the agency's overall push to streamline operations that have been spearheaded by Mr. Darwin?
Appreciate any insight you can share as soon as possible, as I am smack on deadline.
Sincerely,
Amena

.....

Amena H. Saiyid
Water Reporter

Bloomberg Environment

D: **Ex. 6**
C:

asaiyd@bloombergenvironment.com

CASE STUDY: RANGE RESOURCES NEW OWNER POLICY SELF DISCLOSURE¹

I. Acquisition

In September 2016, Range completed acquisition of new assets in the Terryville Field of Louisiana, adding more than 220,000 acres to Range's portfolio.

II. Initial Assessment of Acquired Facilities

- a. Following Range's acquisition of the assets in northern Louisiana, the Environmental Compliance department began assessing compliance with all environmental laws and regulations at the facilities.
- b. Range brought in outside counsel—Pillsbury Winthrop Shaw Pittman LLP—to help assess compliance and develop a strategy for addressing any noncompliance.
- c. Evaluated the key regulations potentially applicable:
 - i. Which sites are subject to 40 C.F.R. Part 60, Subpart OOOO or OOOOa?
 - ii. Which facilities, if any, are major source/Title V sources?
- d. Identified highest producing sites, developed emissions factors, performed modeling.
- e. Compiled an accurate well site and equipment inventory, including dates of well drilling and equipment installation for over 390 individual facilities.

III. Addressing Noncompliance

- a. Based on initial calculations, Range believed that noncompliance at its newly-acquired facilities was fairly widespread, and set out to identify specific noncompliance using more accurate information based on actual sampling and modeling (the inherited data and regulatory determinations were believed to be unreliable)
- b. Range had to decide how to best correct the noncompliance taking into account enforcement exposure and operational needs to continue production.

IV. Weighing Whether to Self-Disclose

- a. Range had to decide whether to disclose the violations to the state and/or EPA, or whether to try and correct the violations before disclosing them. Range concluded that it would be better to disclose the violations before corrective action at all 390 facilities could be completed, since corrective action itself, without appropriate approval may constitute a violation (e.g. installation of a control device requires an ATC)
- b. Range decided that the best course was to voluntarily self-disclose the potential noncompliance to the state, given that the state did not have its own new owner policy or audit policy. Accordingly, Range committed to conducting an audit of all of the newly-acquired facilities under EPA's New Owner Audit Policy.
- c. The New Owner Audit Policy provided flexibility for a company such as Range that acquired facilities to reach an agreement with EPA within nine months from the date of the transaction. It offered substantial penalty mitigation in exchange for any self-disclosed violations and planned corrective action.
- d. The primary considerations – (1) maintaining control over operations and process while correcting violations and (2) reducing penalty and enforcement exposure.

¹ This case study summary is provided only for discussion purposes by Matthew Morrison of Pillsbury Winthrop Shaw Pittman, counsel to Range Resources Corporation. The views and statements herein should not be attributed to Range Resources. Any questions or comments can be directed to Mr. Morrison at matthew.morrison@pillsburylaw.com.

V. Examples of Challenges and Issues with the Audit Policy

- a. Uncertain Application – Application of the New Owner Policy is not automatic just because you bought new facilities; EPA has full discretion whether to apply the Policy. This made us nervous and vulnerable to penalties and enforcement action if EPA rejected our request.
- b. Default to a Short Corrective Action Window – The default corrective action period is 60 days from the discovery of the violation unless EPA grants you an extension. Although extensions are not generally given up front; you can submit a proposed corrective action schedule and hope that it is accepted. Again, if not accepted, you remain potentially subject to enforcement. EPA has a track record of providing reasonable extensions, but there are no guarantees. Range was given three years to complete six phases of its audit for all 390 acquired facilities.
- c. No Model Agreement – EPA had no model New Owner Audit Agreement, and virtually no precedent for this situation, therefore, a new agreement had to be developed. Moreover, we did it by an exchange of letters, rather than a signed document, which raised some question on whether there was a true agreement just by the exchange of different terms.

VI. Facility Auditing and Corrective Action

- a. Range contracted a third-party environmental consultant to assist with ensuring that each well site was properly permitted and that control equipment was installed, designed, and sized appropriately where necessary. The consultants are also conducting regulatory applicability determinations for all of the potentially applicable regulations to oil and gas production.
- b. Range is auditing and completing corrective action at hundreds of sites and is taking various parts of each audit separately. After completing each segment/component of the audit, Range submits a report to EPA and the state summarizing the audit activities, violations discovered, and corrective action completed to EPA.
- c. Range has to also produce semi-annual status updates to EPA, which are also provided to the state.
- d. This process requires careful coordination with the state (the permitting authority), so flexibility for state agency terms should be built into the audit agreement.

VII. Conclusion: Wise Choice with Overall Satisfaction

- a. Range is still conducting its comprehensive audit, but it has already proven a very wise choice. It has established our relationship with state and federal regulators in a very positive way, and we have successfully managed the compliance and enforcement risks we faced in acquiring the NLA assets.
- b. Under the New Owner Policy, any violations originating with the previous owner and discovered and corrected by Range, will typically receive 100% penalty mitigation. This has allowed us to put what would have otherwise been penalty funds into productive investments in emission controls in the field.

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 9/12/2018 7:21:11 PM
To: Beach, Christopher [beach.christopher@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]
Subject: RE: AA Wheeler Enforcement Speech Request
Attachments: CEEC remarks 9-13-18.docx

Just one small edit

From: Beach, Christopher
Sent: Wednesday, September 12, 2018 2:56 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: AA Wheeler Enforcement Speech Request

Susan, here's the latest draft of the remarks. We didn't change much of what you sent, but would you have a chance to take a quick look at this today and just make sure there are no glaring errors or problems in here?

Thank you!
Chris

From: Bodine, Susan
Sent: Monday, September 10, 2018 5:52 PM
To: Beach, Christopher <beach.christopher@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: AA Wheeler Enforcement Speech Request

These are long – but provide enough material for you to draw from.

From: Beach, Christopher
Sent: Monday, September 10, 2018 5:31 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: AA Wheeler Enforcement Speech Request

Hi Susan and Patrick, sorry to bother, but circling back to see if you think these will be ready at some point today?

Thanks!
Chris

From: Beach, Christopher
Sent: Friday, September 7, 2018 11:06 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: AA Wheeler Enforcement Speech Request

That would be perfect. Thank you!

From: Bodine, Susan
Sent: Friday, September 7, 2018 10:18 AM
To: Beach, Christopher <beach.christopher@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: AA Wheeler Enforcement Speech Request

We can get you something by COB Monday.

From: Beach, Christopher

Sent: Friday, September 7, 2018 9:48 AM

To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Subject: AA Wheeler Enforcement Speech Request

Susan and Patrick,

Happy Friday. AA Wheeler will be speaking to the Corporate Environmental Enforcement Council next week on Thursday. Their folks sent me four big picture topics that they would like to hear Wheeler's perspective on: cooperative federalism, limits on enforcement (fair and statutorily-focused enforcement), meaningful metrics, and compliance assistance. They mentioned that compliance assistance and metrics are the two hot topics for them right now. Would you be able to help provide some talkers on these issues? This is really

Deliberative Process / Ex. 5

Thanks!

Chris Beach
Speechwriter
U.S. EPA
202-322-9308

Deliberative Process / Ex. 5

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 3/19/2018 9:26:09 PM
To: Ferguson, Lincoln [ferguson.lincoln@epa.gov]
CC: Patrick Traylor (traylor.patrick@epa.gov) [traylor.patrick@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]
Subject: RE: Weekly Enforcement Meeting
Attachments: OECA Weekly Briefing (March 20 2018) v2.docx

The briefing is revised

Deliberative Process / Ex. 5

From: Bodine, Susan
Sent: Monday, March 19, 2018 9:09 AM
To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Cc: Patrick Traylor (traylor.patrick@epa.gov) <traylor.patrick@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Weekly Enforcement Meeting

Lincoln,

Attached are materials for tomorrow's enforcement meeting with the Administrator.

Susan

Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance
202-564-2440

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 3/19/2018 1:08:38 PM
To: Ferguson, Lincoln [ferguson.lincoln@epa.gov]
CC: Patrick Traylor (traylor.patrick@epa.gov) [traylor.patrick@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]
Subject: Weekly Enforcement Meeting
Attachments: Enforcement/Investigatory / Ex. 7(a) OECA Weekly Briefing (March 20 2018).docx

Lincoln,

Attached are materials for tomorrow's enforcement meeting with the Administrator.

Susan

Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance
202-564-2440

This message is CONFIDENTIAL, and may contain legally privileged information. If you are not the intended recipient, or believe you received this communication in error, please delete it immediately, do not copy, and notify the sender. Thank you.

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 5/3/2018 4:44:11 PM
To: Hull, George [Hull.George@epa.gov]
CC: Chapman, Apple [Chapman.Apple@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Patrick Traylor (traylor.patrick@epa.gov) [traylor.patrick@epa.gov]; Milton, Philip [Milton.Philip@epa.gov]; Jonesi, Gary [Jonesi.Gary@epa.gov]
Subject: RE: New OECA audit policy

Deliberative Process / Ex. 5

Apple is checking on public comment process and has draft web content.

We need to be ready to post on Sunday if we are going to announce on Sunday.

From: Starfield, Lawrence
Sent: Tuesday, April 24, 2018 5:54 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Hull, George <Hull.George@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: RE: New OECA audit policy

Susan and Patrick,

As we move forward with the pilot project for audits in the old and gas sector, I had a couple of suggestions on messaging:

Deliberative Process / Ex. 5

A couple of suggested edits to the earlier message on this are included below.

Larry

From: "Hull, George" <Hull.George@epa.gov>
Date: April 20, 2018 at 11:37:27 AM EDT
To: "Bodine, Susan" <bodine.susan@epa.gov>
Cc: "Chapman, Apple" <Chapman.Apple@epa.gov>
Subject: New OECA audit policy

Susan,

This is language that was developed by OCE for posting on our website. I was told that this reflected comments from Patrick and concurrence from you and Larry.

Enforcement/Investigatory / Ex. 7(a)

Enforcement/Investigatory / Ex. 7(a)

Please let me know what you think. - George

Deliberative Process / Ex. 5

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 11/14/2018 9:37:02 PM
To: Hull, George [Hull.George@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Hannah Branning [Branning.Hannah@epa.gov] [Branning.Hannah@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Patrick Traylor (traylor.patrick@epa.gov) [traylor.patrick@epa.gov]
Subject: AAW talking points for OECA all hands
Attachments: OECA All Hands Talking Points Nov 7.docx

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 11/5/2018 5:27:48 PM
To: Beach, Christopher [beach.christopher@epa.gov]
CC: Traylor, Patrick [traylor.patrick@epa.gov]
Subject: RE: OECA All-Hands
Attachments: OECA All Hands Talking Points Nov 7.docx; OECA FY2018 Organizational Assessment (10-12-2018).pdf

I also attached our org assessment.

From: Beach, Christopher
Sent: Monday, November 5, 2018 12:10 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: OECA All-Hands

Hi Susan, circling back on this. Do you think it might be possible to get something by COB today?

Thanks!
Chris

From: Bodine, Susan
Sent: Thursday, November 1, 2018 6:17 PM
To: Beach, Christopher <beach.christopher@epa.gov>
Cc: Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: OECA All-Hands

Let me send you something tomorrow.
I would not use these talking points.

From: Beach, Christopher
Sent: Thursday, November 1, 2018 3:27 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Traylor, Patrick <traylor.patrick@epa.gov>
Subject: FW: OECA All-Hands

Hi Susan, I have a few questions about the OECA All-Hands meeting next week. How long would you like AAW to speak? And is there anything in particular he should focus on regarding enforcement or other topics? Attached is his most recent major speech on enforcement issues (not counting his remarks to the SAC and ASAC). Are these topics too repetitive for OECA staff? Let me know what you think would be best.

Thanks!
Chris

From: Loving, Shanita
Sent: Wednesday, October 3, 2018 10:34 AM
To: Dickerson, Aaron <dickerson.aaron@epa.gov>
Cc: Bailey, Ethel <Bailey.Ethel@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>
Subject: MEETING/ROOM REQUEST: OECA All Hands Meeting

Good morning Aaron,

Susan would like to schedule an "OECA All Hands Meeting" and invite AA Wheeler to talk briefly about enforcement. We would also like to reserve the Green Room or Map Room to accommodate space for ALL OECA. Susan was looking to have this meeting within the next month if possible.

Subject: OECA All Hands Meeting

Date: Within the next month

Time: 1 hour (10 or 15 minutes remarks from AA Wheeler)

Room Request: Green Room or Map Room

Thanks,

Shanita Loving
Program Specialist
Environmental Protection Agency
IO of the Assist. Administrator of the Office of Enforcement & Compliance Assurance
1200 Pennsylvania Ave., NW
WJC-South, Room 3204
Washington, DC 20460
Phone: (202) 564-4728

Hayly Humphreys

Office of the Administrator
U.S. EPA

From: Beach, Christopher

Sent: Thursday, November 1, 2018 12:35 PM

To: Humphreys, Hayly <humphreys.hayly@epa.gov>; Eby, Natasha <eby.natasha@epa.gov>; Dickerson, Aaron <dickerson.aaron@epa.gov>

Subject: OECA All-Hands

Could you all send me info on the OECA all-hands event next week? I don't think I've seen anything on it yet, so I'll need to reach out to OECA and see what they want him to focus on.

Thanks!

Chris

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 11/4/2018 7:38:26 PM
To: Shiffman, Cari [Shiffman.Cari@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]; Branning, Hannah [Branning.Hannah@epa.gov]; Hull, George [Hull.George@epa.gov]; Egan, Patrick [egan.patrick@epa.gov]
Subject: All Hands Talking Points
Attachments: OECA All Hands Talking Points Nov 7.docx; OECA FY2018 Organizational Assessment (10-12-2018).pdf

I propose to send this to Chris Beach by noon tomorrow, along with the Org Assessment.
Any comments?

Susan

From: Shiffman, Cari
Sent: Friday, November 2, 2018 5:53 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>; Hull, George <Hull.George@epa.gov>
Subject: RE: OD suggestions for all hands?

Susan,

Deliberative Process / Ex. 5

Thanks,

Cari Shiffman, Chief of Staff
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office: (202) 564-2898 | Mobile: **Ex. 6**

From: Shiffman, Cari
Sent: Friday, November 02, 2018 5:48 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>; Hull, George <Hull.George@epa.gov>
Subject: RE: OD suggestions for all hands?

Susan,

I didn't receive anything from OAP or OC, so I wrote something for them.

Acting Administrator Andrew Wheeler
OECA All Hands – November 7, 2018

Deliberative Process / Ex. 5

Thanks,

Cari Shiffman, Chief of Staff
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office: (202) 564-2898 | Mobile: **Ex. 6**

From: Bodine, Susan

Sent: Friday, November 02, 2018 5:04 PM

To: Shiffman, Cari <Shiffman.Cari@epa.gov>

Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Subject: OD suggestions for all hands?

Can you send what you have received?

Message

From: Bodine, Susan [bodine.susan@epa.gov]
Sent: 9/10/2018 9:54:45 PM
To: Hull, George [Hull.George@epa.gov]; Egan, Patrick [egan.patrick@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Branning, Hannah [Branning.Hannah@epa.gov]
Subject: FW: AA Wheeler Enforcement Speech Request
Attachments: Tlkg Pts for Administrator at CEEC 9-10-18.docx; Transition from National Enforcement Initiatives to National Compliance Initiatives (Aug. 21 2018).pdf; Interim OECA Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States (Jan. 22, 2018).pdf

Here is what I sent over.

From: Bodine, Susan
Sent: Monday, September 10, 2018 5:52 PM
To: Beach, Christopher <beach.christopher@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: AA Wheeler Enforcement Speech Request

These are long – but provide enough material for you to draw from.

Message

From: Senn, John [Senn.John@epa.gov]
Sent: 5/10/2018 5:43:02 PM
To: Traylor, Patrick [traylor.patrick@epa.gov]; Porter, Amy [Porter.Amy@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Hull, George [Hull.George@epa.gov]; Milton, Philip [Milton.Philip@epa.gov]; Jonesi, Gary [Jonesi.Gary@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]
Subject: RE: Audit Refresh - proposed revisions

I will work to get this approved by the OPA web office ASAP and loop in Munsel Norris so she can start building the web page.
-John

From: Traylor, Patrick
Sent: Thursday, May 10, 2018 12:58 PM
To: Porter, Amy <Porter.Amy@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Hull, George <Hull.George@epa.gov>; Senn, John <Senn.John@epa.gov>; Milton, Philip <Milton.Philip@epa.gov>; Jonesi, Gary <Jonesi.Gary@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Subject: RE: Audit Refresh - proposed revisions

Amy:

Thanks for the revised document. Susan, Larry, and I have reviewed it and have only minor revisions to propose in the attached, along with highlighted conforming changes to the web summary below. Please work with John Senn to get the update posted to EPA's web site.

Thanks,
Patrick

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)

Ex. 6 (cell)

From: Porter, Amy
Sent: Monday, May 7, 2018 6:04 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Hull, George <Hull.George@epa.gov>; Senn, John <Senn.John@epa.gov>; Milton, Philip <Milton.Philip@epa.gov>; Jonesi, Gary <Jonesi.Gary@epa.gov>
Subject: Audit Refresh - proposed revisions

Susan –

Please find attached a revised Audit Policy “Refresh” piece

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

See also below a very short summary paragraph to be posted at the top of our [Audit Policy](#) and [New Owner and eDisclosure](#) public web pages.

Deliberative Process / Ex. 5

Please let me know if you would like to discuss.

Thank you,
Amy

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

Message

From: Morrison, Matthew W. [matthew.morrison@pillsburylaw.com]
Sent: 3/20/2018 9:35:40 PM
To: Traylor, Patrick [traylor.patrick@epa.gov]
Subject: Lessons Learned from Audit Agreements in the Oil and Gas Production Sector
Attachments: Audit Policy in the Oil and Gas Production Sector - Lessons Learned 4829-6920-4827 v.1.docx

Hi Patrick,

Great to catch up with you today. Here is the more detailed summary of lessons learned. I'm happy to discuss further at your convenience.

Please note that this paper does not necessarily reflect the views of Range Resources, but rather my perspective and the thoughts of a colleague of mine. We prepared this document on our own, as a favor to Apple and the Agency. Although we told Range Resources we were working on it, we prepared and submitted it on our own time. Notwithstanding that fact, I would ask that you please not post this analysis until you check back with me.

And please let me know what dates sound good for a Range Marcellus visit, as well as getting together downtown soon.

Best regards,

Matt

Matthew W. Morrison | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t [Ex. 6] | f 202.663.8007 | m [Ex. 6]
matthew.morrison@pillsburylaw.com | website bio

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**LESSONS LEARNED ON THE APPLICATION OF EPA’S AUDIT
AND NEW OWNER POLICIES
TO THE OIL AND GAS PRODUCTION SECTOR**

By Matt Morrison and Brendan Hennessey

Pillsbury Winthrop Shaw Pittman¹

January 29, 2018

1. Initial Determinations of Potential Violations Can Be Challenging.

- The Audit Policy defines the “discovery” of a violation as “when any officer, director, employee or agent of the facility has an objectively reasonable basis for believing that a violation has, or may have, occurred.” The “objectively reasonable basis” is considered to be what a prudent person, having the same information, would have believed. This inherently ambiguous standard is particularly difficult to ascertain in the oil and gas production sector.
- It can be very challenging to determine when a violation “may have” occurred when hundreds of facilities have been acquired and an entity may have imperfect information that needs to be reviewed and confirmed. For instance, a belief that facilities may have been improperly permitted based on production levels at the time of acquisition may lead personnel to suspect that violations have occurred, but a company will not be able to make a definitive determination until it calculates a site’s emissions or potential to emit after taking condensate samples, developing emissions factors, and applying those calculations to production data. This process is even more complicated by the need to make source-by-source

¹ This paper reflects solely the views and opinions of its authors based on their experience applying EPA’s Audit and New Owner Policies for companies engaging in oil and gas exploration and production, and is not intended to reflect the views of any particular company the authors may have represented.

determinations after evaluating equipment and equipment-specific calculations, such as the potential-to-emit of storage vessels.

- EPA recommends in the Audit Policy that if a company has some doubt as to the existence of a violation, that the company proceed with disclosure and allow the regulatory authorities to make a definitive determination, but this could mean hundreds of disclosures that all must be addressed within 60 days.
- *Suggested Fix: Establish a policy that deems “disclosure” to occur when the new owner completes its audit of the facilities at issue and submits a report to EPA summarizing the company’s findings for a certain type of violations (e.g., permitting, vapor control systems, NSPS and NESHAP, etc.). “Disclosure” should be deemed to take place within the first 60 days of acquiring the assets, or after the new owner has completed its evaluation of that particular regulatory requirement.*

2. There is Inadequate Guidance on Penalty Mitigation Under the New Owner Policy.

- In order to determine whether to voluntarily self-disclose a violation, a company needs to understand how penalty mitigation will be granted under the Audit Policy or New Owner Policy. This is challenging given the lack of guidance on this issue for new owners.
- Currently, the best method of assessing potential penalties is to look at consent decrees and their associated penalties, but consent decrees do not explain what percentage of the penalties are attributed to the gravity based component or the economic benefit component of the fine.
- According to the New Owner Policy, new owners are liable for the “economic benefit” that they receive from non-compliance post-acquisition, but it is unclear what is encapsulated in the economic benefit or gain that a company receives when it acquires facilities that require substantial retrofitting and improvements. For example, is the cost of a company’s audit and the cost of all corrective action subtracted from EPA’s calculation of the economic benefit? Is the company liable for post-acquisition economic benefit if it completes the audit activities within the timeframe agreed by the parties and

undertakes corrective action within the schedule approved by the agency?

- *Suggested Fix: Provide guidance on whether and to what extent companies will face penalty exposure for violations evaluated and reported post-acquisition. EPA should clarify, among other things, that companies will not be held responsible for economic benefit post-acquisition as long as they identify violations within the timeframes agreed by EPA and complete corrective action within the schedule approved by EPA.*

3. Uncertainty Exists as to the Terms of New Owner and Audit Agreements.

- EPA's guidance, "Corporate Auditing Agreements for Audit Policy Disclosures" states that an exchange of letters is sufficient for audit of less than six months, but in practical terms (such as with Range Resources) an exchange of letters is appropriate for longer and more complex audits. This should be clarified to save companies from spending time developing a proposed consent decree like audit agreement or from being detracted from having to engage in lengthy negotiations.
- Companies are wary of entering into agreement where the form and terms of the agreement are unknown. EPA has had few new owner agreements, and what agreements exist are difficult to access and review. Even where a company submits the necessary information needed to apply for a new owner agreement, it doesn't know what terms might apply until it receives a letter from EPA. If the company disagrees with the exchange of terms, it has no choice but to rescind its request or reject the terms. This is not an agreement, it is simply an exchange of letters, and an inefficient means of trying to reach a true agreement.
- "Corporate Auditing Agreements for Audit Policy Disclosures" is available at:
https://www.epa.gov/sites/production/files/documents/corporateaudita_greecorrection050701.pdf
- *Suggested fix: Develop and publish a model audit agreement and new owner agreement.*

4. The Current Policy Provides Inadequate Timing for Developing and Executing an Audit Agreement, Leaving New Owners at a Disadvantage in Negotiating the Agreement.

- EPA Policy provides new owners with nine months from the date of transaction in which to make disclosures or execute an audit agreement (currently preferred through an exchange of letters) with EPA. Although that may be a sufficient amount of time for the acquisition of a single facility or a handful of facilities, it is inadequate for large acquisitions of facilities.
- Even if an audit agreement takes the form of an exchange of letters, it can be a time consuming process. In the case of oil and gas production sites, discovering violations involves dozens of regulations that require the collection of data and the performance of calculations and modeling—all of which takes substantial time.
- In the case of Range Resources, the closing of the acquisition occurred in September 2016 and the audit agreement was not finalized until August 2016. Since an audit agreement is supposed to be concluded within the nine-month window, Range Resources had to seek extensions. EPA used the threat of refusing additional extensions to unfairly extract concessions from Range Resources, including legitimate concerns Range Resources raised about schedule and EPA's insistence on questionnaire items that had no application to the acquired sites.
- *Suggested Fix: EPA should provide that only an initial disclosure of potential violations and a notice of intent to enter into an audit agreement must be performed within nine months.*

Alternatively, the new owner window should be increased to one year so as to encourage companies to self-disclose without fear of not being able to negotiate an audit agreement within the nine month window. And as mentioned earlier, EPA should expedite negotiations by developing a model agreement, rather than an exchange of letters.

5. EPA's Default Corrective Action Window of Sixty Days is Generally Insufficient to Conduct Corrective Action After a Large, Multi-Facility Acquisition.

- In many, if not most cases, corrective action requires more than 60 days. Consequently, the requirement that a company conduct all corrective action within 60 days, unless permission is granted by EPA to extend that deadline, leaves a company at risk on self-disclosing violations and not receive penalty mitigation.
 - i. An example of 60 days simply not being possible, is where equipment for a closed vent system must be ordered and installed and vapor control equipment, such as an enclosed burner unit, must also be ordered and installed. The difficulty in completing this is even more challenging when there are dozens of sites that require installation of the equipment. In cases where only a potential violation was disclosed, modeling and calculations would need to precede the ordering and installation of equipment as well.
 - ii. Complying with the 60 day window is also not possible in cases where an air permit can only be obtained after corrective action at a well site has been completed. The state may require that a permit be obtained based on a sites completed well design, because the installation of emissions controls will reduce the sites potential to emit and therefore qualify the site for a different type of permit or exemption. As such, a permit application cannot even be submitted until the emissions controls have been installed. This will generally require more than 60 days.
- EPA's current policies provide that EPA may grant extensions of time, *but only once the 60-day default corrective action period has already commenced*. Consequently, even when the company is certain it will need additional time, EPA is hesitant to provide extensions of the 60-day period where all the parties recognize that the work cannot possibly be completed within a 60-day window. EPA's response that companies should trust the agency to be reasonable with extensions is little comfort to new owners facing significant liability for violations that cannot be quickly corrected.

- EPA has made exceptions to its position on extensions, however. The AT&T audit agreement in EPA's "Corporate Auditing Agreements for Audit Policy Disclosures", for example, provided that only notice must be given to EPA for an extension but that permission is not required. This model audit agreement therefore is misleading, based on EPA's current practices.
- *Suggested Fixes: Either allow companies to simply provide notice to EPA of additional needed time for corrective action or change EPA's policy to allow companies to negotiate corrective action schedules up front, rather than once the 60-day period has begun.*

6. Clarify Exceptions for Imminent and Substantial Endangerments.

- EPA's New Owner Policy appropriately reserves EPA's rights to accelerate a negotiated corrective action schedule to address any imminent and substantial endangerment that may arise at a facility.
- What constitutes an "imminent and substantial endangerment" is fairly broadly defined in caselaw, which raises questions regarding whether EPA might unilaterally accelerate the agreed-upon corrective action schedule based on a determination that emissions controls are inadequate after an audit agreement has been executed.
- *Suggested Fix: Clarify that the negotiated corrective action schedule will remain intact, except that EPA retains all of its authorities to issue a separate imminent and substantial endangerment order under Section 303 of the Act.*

7. Clarify What Constitutes Corrective Action.

- EPA needs to clarify what measures constitute "corrective action", particularly in the context of permitting corrective action.
- For instance, does the submission of permit applications constitute corrective action or does a company need to obtain the new permit before certifying compliance?
- Also, can the company take into consideration the emission controls it will be installing (and hence become a minor source) when submitting a permit application, or does the corrective action have to include a

permit application and then a subsequent permit modification once controls are installed?

- *Suggested fix: Develop guidance on what constitutes corrective action, at least for post-acquisition permitting.*

8. The Application of the Audit Policy's Systematic Discovery Criterion to New Owners is Unclear.

- Under the Audit Policy, any violations eligible for favorable self-disclosure treatment must have been discovered through some type of program of systematic investigation, such as an environmental audit or a compliance management system. An environmental audit is considered “a systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements.”
- The New Owner Policy changes this criteria by providing that the “periodic” requirement in the case of pre-acquisition due diligence, but keeps it for all other cases. Therefore, under the policy, a company could miss non-compliance during pre-acquisition due diligence, then audit the facilities once they have ownership and full control over them and not be eligible for full penalty mitigation. They would be eligible for only 75% penalty mitigation since discovery would not be considered systematic. This does not make sense since a party will not have ownership of the facilities and therefore cannot properly audit them until closing.
- *Suggested Fix: A company should be allowed to perform a one-time audit following acquisition of new facilities to verify compliance and the periodic requirement should be dropped altogether in the new owner context. Otherwise, it should be clarified whether a company must have a commitment to conduct periodic audits on an ongoing basis in order to qualify for the systematic discovery criteria.*

9. Prior Data and Regulatory Applicability Determinations From the Prior Owner May be Unreliable.

- The VOC and methane capture regulations (40 C.F.R. Part 60, Subparts OOOO and OOOOa) require a determination as to whether storage vessels are subject to the regulations to be made in the first 30

days following start-up, but a new owner may need to determine whether newly-acquired storage vessels are subject to these regulations outside that window if the prior owner did not make a determination or the determination appears faulty. Further complicating the matter, the new owner may not have accurate data from the first 30 days following startup, which could have been years ago. The New Owner Policy should clarify whether a company may make an assessment based on current, post-acquisition data.

- An associated point is whether a new owner is required to rely on applicability determinations made by the prior owner or data collected by the prior owner. It would not be protective of the environment to require a new owner to abide by an applicability determination made by a prior owner that the new owner knows is wrong, but this may also require the new owner to conduct new applicability determinations.
- *Suggested Fix: Clarify, in guidance, that new owners may make applicability determinations based on post-acquisition data they gather, and provide companies with sufficient time (such as nine to twelve months after the audit agreement) in which to make such determinations.*

10. Clarify Federalism Approach for Agreements with States.

- States vary significantly in their respective approaches to audit disclosures. Some have audit programs by statute, some by regulation, and some by guidance. Others, such as Louisiana, have no such program and maintain that it is simply a consideration to be taken into account by the state in determining the appropriate enforcement response.
- Under the Clean Air Act, the state agency is normally responsible for implementing the statute and is the permitting authority, which means that a self-disclosing company must please both the state agency and EPA (even though the state may not have a self-disclosure policy).
- In some instances, EPA has over-filed, finding the state program or its oversight of an audit agreement to be inadequate. This creates unnecessary uncertainty for the new owner, and provides a disincentive to entering into any such agreement.

- *Suggested Fix: Clarification is needed to explain whether and to what extent a company has to enter into audit agreements with both federal and state regulators, and the extent to which one agency would recognize an agreement with the other.*

11. De-couple the Audit Policy's New Owner Questionnaire from New Owner Situations.

- The New Owner Questionnaire was not designed for new owner audit agreements, and is inappropriate for large, multi-facility audits. In circumstances involving new owners and existing owners a company has to collect and submit unnecessary information. Even as applied to companies that are new owners, the questionnaire has been conveyed as non-negotiable, despite the fact that it was never subject to notice and comment, and never publicly made part of the audit policy or new owner policy. Although EPA may rightfully ask for new owners to track certain information, the current questionnaire is unnecessarily time consuming and wasteful.
- For instance, where a company is auditing hundreds of oil and gas sites, using dozens of staff, both in-house and consultants, to collect information, conduct inspections, perform calculations, make regulatory applicability determinations, and other audit activities, it is unclear how the entity identifies the name, title, employer, and education / training of each individual who discovered each violation. Requiring the entity to report the persons responsible for the audit serves a clear purpose, but EPA has been unwilling to engage in discussions to tailor it to the audit being performed.
- *Suggested Fix: Revisit the Audit Agreement Questionnaire and submit a more streamlined version for public notice and comment. Separately, draft a questionnaire specific to new owners.*

12. Distinguish Audit Investigations from Other Clean Air Act Monitoring and Reporting Obligations.

- EPA needs to clarify whether its audit obligations should include monitoring and reporting obligations that would exist independent of any audit agreement.

- The regulations at 40 C.F.R. Part 60, Subpart OOOOa, for example require that a company conduct semi-annual leak detection and repair (LDAR) surveys. Any leaks discovered must be repaired within 30 days. Further, the company must report any deviations from the requirements on their annual report. Since oil and gas companies are already required to perform semi-annual inspections at each well site and report any discovered deviations, it is unclear why they would self-disclose such leaks as violations. Even if such inspections and reports are included, it's unclear whether the 30-day window in which to rectify any leaks would be able to utilize the 60-day window for corrective action under its audit agreement instead.
- *Suggested Fix: EPA should clarify whether violations discovered based on other Clean Air Act monitoring and reporting programs (beyond Title V) should nonetheless qualify for audit policy protection or whether these violations cannot be considered voluntarily discovered.*

Message

From: Traylor, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6D06C6B766C4B4B8BFD6B0FEA4B998-TRAYLOR, PA]
Sent: 5/10/2018 4:57:56 PM
To: Porter, Amy [Porter.Amy@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Hull, George [Hull.George@epa.gov]; Senn, John [Senn.John@epa.gov]; Milton, Philip [Milton.Philip@epa.gov]; Jonesi, Gary [Jonesi.Gary@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]
Subject: RE: Audit Refresh - proposed revisions
Attachments: Refresh Announcement for Disclosures 5-7-18 (LS-PT redlines 5-10-2018).docx

Amy:

Thanks for the revised document. Susan, Larry, and I have reviewed it and have only minor revisions to propose in the attached, along with highlighted conforming changes to the web summary below. Please work with John Senn to get the update posted to EPA's web site.

Thanks,
Patrick

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)

Ex. 6 (cell)

From: Porter, Amy
Sent: Monday, May 7, 2018 6:04 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Hull, George <Hull.George@epa.gov>; Senn, John <Senn.John@epa.gov>; Milton, Philip <Milton.Philip@epa.gov>; Jonesi, Gary <Jonesi.Gary@epa.gov>
Subject: Audit Refresh - proposed revisions

Susan –

Please find attached a revised Audit Policy “Refresh” piece

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

See also below a very short summary paragraph to be posted at the top of our [Audit Policy](#) and [New Owner and eDisclosure](#) public web pages.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please let me know if you would like to discuss.

Thank you,
Amy

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

Message

From: Hull, George [Hull.George@epa.gov]
Sent: 3/20/2018 9:28:30 PM
To: Bodine, Susan [bodine.susan@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]; Chapman, Apple [Chapman.Apple@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]
Subject: RE: Inquiry from Bloomberg on

O.k. Will do. - George

From: Bodine, Susan
Sent: Tuesday, March 20, 2018 5:26 PM
To: Traylor, Patrick <traylor.patrick@epa.gov>; Hull, George <Hull.George@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: RE: Inquiry from Bloomberg on

Deliberative Process / Ex. 5

From: Traylor, Patrick
Sent: Tuesday, March 20, 2018 5:24 PM
To: Hull, George <Hull.George@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: RE: Inquiry from Bloomberg on

Deliberative Process / Ex. 5

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)

Ex. 6 (cell)

From: Hull, George
Sent: Tuesday, March 20, 2018 4:17 PM
To: Traylor, Patrick <traylor.patrick@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: RE: Inquiry from Bloomberg on

Patrick,
Let me know if you want me to hold the response. Thanks, George

From: Traylor, Patrick
Sent: Tuesday, March 20, 2018 5:10 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>

Cc: Hull, George <Hull.George@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Subject: RE: Inquiry from Bloomberg on

Yes, it's [here](#).

Deliberative Process / Ex. 5

Patrick Traylor

Deputy Assistant Administrator

Office of Enforcement and Compliance Assurance

U.S. Environmental Protection Agency

(202) 564-5238 (office)

Ex. 6 cell)

From: Bodine, Susan

Sent: Tuesday, March 20, 2018 4:07 PM

To: Chapman, Apple <Chapman.Apple@epa.gov>

Cc: Traylor, Patrick <traylor.patrick@epa.gov>; Hull, George <Hull.George@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>

Subject: Re: Inquiry from Bloomberg on

It is posted

Sent from my iPhone

On Mar 20, 2018, at 4:44 PM, Chapman, Apple <Chapman.Apple@epa.gov> wrote:

Patrick

Deliberative Process / Ex. 5

Sent from my iPhone

On Mar 20, 2018, at 4:36 PM, Traylor, Patrick <traylor.patrick@epa.gov> wrote:

George:

Deliberative Process / Ex. 5

Patrick

Patrick Traylor

Deputy Assistant Administrator

Begin forwarded message:

From: "Hull, George" <Hull.George@epa.gov>
Date: March 20, 2018 at 1:55:18 PM CDT
To: "Traylor, Patrick" <traylor.patrick@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>
Cc: "Senn, John" <Senn.John@epa.gov>
Subject: Inquiry from Bloomberg on

Susan, Larry and Patrick,

Amena Saiyid of Bloomberg Environment sent us the questions below regarding the Clean Air Act Audit Program for the Oil and Gas Sector.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please let me know if this is on target and if you have any edits.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Reporter's Questions:

I want to know how this owner audit policy will be tweaked to accommodate the oil and gas producers. Who uses this policy right now and will this just apply to owners of new oil and gas assets or existing ones?

Is this initiative part of the agency's overall push to streamline operations that have been spearheaded by Mr. Darwin?

Also, what do companies get in return for self auditing? According to the epa audit page, it says absolution from penalties.

Draft Response:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Traylor, Patrick
Sent: Tuesday, March 20, 2018 11:17 AM
To: Hull, George <Hull.George@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: Re: Follow up questions based on Mr. Traylor's presentation this morning on EPA's new compliance initiative

Deliberative Process / Ex. 5

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
Ex. 6 (cell)

On Mar 20, 2018, at 10:13 AM, Hull, George
<Hull.George@epa.gov> wrote:

Hi Patrick,

From: Saiyid, Amena
[mailto:saisaiyid@bloombergenvironment.com]
Sent: Tuesday, March 20, 2018 10:06 AM
To: Hull, George
<Hull.George@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: Follow up questions based on Mr. Traylor's presentation this morning on EPA's new compliance initiative
Importance: High

[illegible]

D: **Ex. 6**
C: asaavid@bloombergenvironment.com

ED 002311 00002508-00005

Message

From: Hull, George [Hull.George@epa.gov]
Sent: 9/7/2018 9:55:57 PM
To: Bodine, Susan [bodine.susan@epa.gov]
CC: egan, patrick [egan.patrick@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Traylor, Patrick [traylor.patrick@epa.gov]; Shiffman, Cari [Shiffman.Cari@epa.gov]; Branning, Hannah [Branning.Hannah@epa.gov]
Subject: RE: AA Wheeler Enforcement Speech Request
Attachments: Tlkg Pts for Administrator at CEEC 9-7-18.docx

Susan,

This is what I was able to put together this afternoon.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 I may not know the right place to look. I would be glad to work on this more on Monday, if there are additional pieces you want me to add. Thanks, George

From: Bodine, Susan
Sent: Friday, September 07, 2018 10:18 AM
To: Hull, George <Hull.George@epa.gov>
Cc: egan, patrick <egan.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>
Subject: RE: AA Wheeler Enforcement Speech Request

No.
How about Monday?

From: Hull, George
Sent: Friday, September 7, 2018 10:17 AM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: egan, patrick <egan.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>
Subject: RE: AA Wheeler Enforcement Speech Request

Sure. Are we aiming to get something back to Christopher Beach today? - George

From: Bodine, Susan
Sent: Friday, September 07, 2018 10:14 AM
To: Hull, George <Hull.George@epa.gov>
Cc: egan, patrick <egan.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>
Subject: FW: AA Wheeler Enforcement Speech Request
Importance: High

CEEC is the audience.

Can you assist?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Source docs: My newsletter, the NEI to NCI memo, Earth X remarks, Interim guidance.

From: Beach, Christopher

Sent: Friday, September 7, 2018 9:48 AM

To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Subject: AA Wheeler Enforcement Speech Request

Susan and Patrick,

Happy Friday. AA Wheeler will be speaking to the Corporate Environmental Enforcement Council next week on Thursday. Their folks sent me four big picture topics that they would like to hear Wheeler's perspective on: cooperative federalism, limits on enforcement (fair and statutorily-focused enforcement), meaningful metrics, and compliance assistance. They mentioned that compliance assistance and metrics are the two hot topics for them right now. Would you be able to help provide some talkers on these issues? This is really

Deliberative Process / Ex. 5

Thanks!

Chris Beach
Speechwriter
U.S. EPA
202-322-9308

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Porter, Amy [Porter.Amy@epa.gov]
Sent: 5/10/2018 5:51:12 PM
To: Traylor, Patrick [traylor.patrick@epa.gov]
CC: Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Kelley, Rosemarie [Kelley.Rosemarie@epa.gov]; Hull, George [Hull.George@epa.gov]; Senn, John [Senn.John@epa.gov]; Milton, Philip [Milton.Philip@epa.gov]; Jonesi, Gary [Jonesi.Gary@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]
Subject: RE: Audit Refresh - proposed revisions

Thanks very much, Patrick. We have a couple of edits (one minor typo and changing links to blue) and then will proceed to post.

From: Traylor, Patrick
Sent: Thursday, May 10, 2018 12:58 PM
To: Porter, Amy <Porter.Amy@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Hull, George <Hull.George@epa.gov>; Senn, John <Senn.John@epa.gov>; Milton, Philip <Milton.Philip@epa.gov>; Jonesi, Gary <Jonesi.Gary@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Subject: RE: Audit Refresh - proposed revisions

Amy:

Thanks for the revised document. Susan, Larry, and I have reviewed it and have only minor revisions to propose in the attached, along with highlighted conforming changes to the web summary below. Please work with John Senn to get the update posted to EPA's web site.

Thanks,
Patrick

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
Ex. 6 cell)

From: Porter, Amy
Sent: Monday, May 7, 2018 6:04 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Hull, George <Hull.George@epa.gov>; Senn, John <Senn.John@epa.gov>; Milton, Philip <Milton.Philip@epa.gov>; Jonesi, Gary <Jonesi.Gary@epa.gov>
Subject: Audit Refresh - proposed revisions

Susan –

Please find attached a revised Audit Policy “Refresh” piece: Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

See also below a very short summary paragraph to be posted at the top of our [Audit Policy](#) and [New Owner and eDisclosure](#) public web pages.

Deliberative Process / Ex. 5

Please let me know if you would like to discuss.

Thank you,
Amy

Amy Porter, Director
Crosscutting Policy Staff
Office of Civil Enforcement
US Environmental Protection Agency
202-564-2431

Message

From: Lia Parisien [lparisien@ecos.org]
Sent: 3/29/2018 1:41:00 PM
To: dglatt@nd.gov; Roy Hartstein [roy_hartstein@swn.com]; Traylor, Patrick [traylor.patrick@epa.gov]
Subject: Quoted in Bloomberg oil and gas article
Attachments: viewArticlePDF.pdf

Each of you is quoted in the attached article.

Lia

----- Forwarded message -----

From: **Saiyid, Amena** <asaivid@bloombergenvironment.com>
Date: Thursday, March 29, 2018
Subject: the oil and gas article
To: Lia Parisien <lparisien@ecos.org>

--

Lia Parisien
Executive Project Manager
Environmental Council of the States (ECOS)

Ex. 6

www.ecos.org

Mark your calendar for the August 28-30 ECOS Fall Meeting in Stowe, VT!

*Oil & Gas***Oil, Gas Firms Could Avoid EPA Penalties by Admitting Violations**

Oil and gas producers that choose to report past environmental violations at drilling sites, and related assets that they acquire, may dodge penalties under an audit program that the EPA plans to expand.

The Environmental Protection Agency would build upon a self-audit program that has been in place since 2008 to foster compliance and reward companies that do make an effort to meet environmental laws, Patrick Traylor, deputy assistant EPA administrator for enforcement and compliance assurance, told the Environmental Council of the States during a March 20 panel discussion on encouraging oil and gas compliance in St. Paul, Minn.

The EPA initiative is a positive step, questions linger the details, Roy Hartstein, vice president for strategic solutions at Southwestern Energy Co., the third largest producer of natural gas in the continental U.S., told Bloomberg Environment. He said he wanted to see "the mechanics of how this program will work."

The nuts and bolts of how the program would work for the oil and gas sector is an issue that the EPA has

just begun to work out, Traylor said, acknowledging that it takes time to write out audit agreements. He assured state officials that the credible threat of enforcement would remain in the background.

Self-auditing is a positive step in an era of shrinking budgets, Dave Glatt, co-chairman of the ECOS shale oil and gas caucus and environmental health chief for the North Dakota Department of Health, said.

"The challenge for the EPA is to apply the audit policy that currently applies to single manufacturing facilities to multiple oil and gas facilities," Traylor said, adding that the EPA will be looking to states that have self-auditing programs in place.

The agency doesn't want to measure compliance by how many notices of violations are filed with the Justice Department, Traylor said.

"These are good tracking tools, but not a measure of compliance," he said.

By AMENA H. SAIYID

To contact the reporter on this story: Amena H. Saiyid in St. Paul, Minn., at asaiyid@bloombergenvironment.com

To contact the editor responsible for this story: Rachael Daigle at rdaigle@bloombergenvironment.com

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